85-115

No. .....

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In The

Supreme Court of the United States

October Term, 1985

NATIONAL FREIGHT, INC., a New Jersey corporation; DART TRANSIT COMPANY, a Minnesota corporation; OWENS-ILLINOIS, INC., an Ohio corporation; and CONTINENTAL CAN COMPANY, INC., a Delaware corporation,

Petitioners,

vs.

THOMAS D. LARSON, Secretary of Transportation; COL. DANIEL F. DUNN, Commissioner of State Police; LEROY S. ZIMMERMAN, Attorney General; and HON. RICHARD THORNBURGH, Governor,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTION PRESENTED

Does 49 U.S.C. § 2311(b), a safety regulation which confines states to regulating truck trailer length rather than overall length, apply on all highways or only on Interstate Highways and certain highways designated by the Secretary of Transportation?

TABLE OF CONTENTS

Page

Question Presented i

Table of Contents ii

Table of Authorities iii

Opinion Below 2

Jurisdiction 2

Statutory Provisions Involved 2

Statement of Case 3

Background 3

Parties 5

Proceedings Below 6

Reasons for Granting Writ 7

Implementing Congressional Policy 7

State Legislatures and Industry Need Certainty 10

Conclusion 13

Appendix .....

Opinion of the Third Circuit Court of Appeals ..... App. 1

Judgment of the Third Circuit Court of Appeals ..... App. 19

Opinion of the District Court for the Middle District of Pennsylvania ..... App. 20

Stipulation of Facts ..... App. 37

Excerpts of Text of 49 U.S.C. § 2311, § 2312 ..... App. 46

Excerpts of S. Rep. No. 97-298 ..... App. 49

Text of 75 Pa. Cons. Stat. Ann. § 4923 ..... App. 54

List of Affiliated Corporations (Rule 28.1) ..... App. 55

TABLE OF AUTHORITIES

Page

CASES

National Freight, Inc. et al. v. Thomas D. Larson, et al., 760 F.2d 499 (3rd Cir. 1985) ..... *passim*

National Freight, Inc. et al. v. Thomas D. Larson, et al., 583 F. Supp. 1461 (M. D. Pa. 1984) 2

Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429 (1978) 9

United States v. Florida, 585 F. Supp. 807 (N.D. Fla. 1984) 6, 11

STATUTES:

23 U.S.C. § 103 11

23 U.S.C. § 127 4

23 U.S.C. § 152 11

23 U.S.C. § 219 11

28 U.S.C. § 1254(1) 2

49 U.S.C. § 2301 4

49 U.S.C. § 2311(a)(c) 4

49 U.S.C. § 2311(b) 2, 4

49 U.S.C. § 2311(e) 12

49 U.S.C. § 2312 4

49 U.S.C. § 2316 4

75 Pa. C.S.A. § 4923(a) (Supp. 1983-1984) 5

75 Pa. C.S.A. § 4923(b)(5) 5

Surface Transportation Act of 1982 ..... passim

TABLE OF AUTHORITIES—Continued

Page

OTHER MATERIALS:

Comment of 60 N.R. Committee, FHWA Docket No. 85-16 ..... 10, 11

48 Fed. Reg. 5210, 5211 (Feb. 3, 1983) 10

49 Fed. Reg. 23302 (June 5, 1984) 6, 11

50 Fed. Reg. 8342, 8344 (March 1, 1985) 10

50 Fed. Reg. 12825 (April 1, 1985) 10

H. 6211, 97th Cong. 1st Sess. (1981) 8

S. 1402, 97th Cong. 1st Sess. (1981) 8, 9

S. Rep. No. 97-298, 97th Cong. 1st Sess. (1981) 8, 9

1982 U.S. Code Cong. and Admin. News, pp. 3639, 3744 4, 9

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioners[1] respectfully request this Court to issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Third Circuit, entered April 23, 1985.

[1] A list of affiliated corporations and subsidiaries appears in the Appendix at p. 55.

OPINION BELOW

The opinion of the Court of Appeals is published at 760 F.2d 499 (3rd Cir. 1985). The opinion of the District Court is published at 583 F. Supp. 1461 (M.D. Pa. 1984). Both are reproduced in the appendix for convenience. App. pp. 1-36.

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JURISDICTION

The judgment of the Court of Appeals was entered on April 23, 1985, and this petition was filed within 90 days. This Court has jurisdiction under 28 U.S.C. § 1254(1).

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STATUTORY PROVISIONS INVOLVED

United States Code, Title 49, § 2311(b):

> "(b) Length limitations established, maintained, or enforced by the States under subsection (a) of this section shall apply solely to the semitrailer or trailer or trailers and not to a truck tractor. No State shall establish, maintain, or enforce any regulation of commerce which imposes an overall length limitation on commercial motor vehicles operating in truck-tractor semitrailer or truck tractor semitrailer, trailer combinations. . . ."

A fuller excerpt of the statute involved is printed in the appendix. App. pp. 46-47.

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STATEMENT OF CASE

Background

Prior to 1983, regulation of truck size and configuration was largely a state matter, subject to the strictures of the Commerce Clause. Most states regulated the overall length of semi-trailer combinations, the most common limit being 60 feet.

Within the 60-foot overall limit, carriers who hauled low density freight such as empty cans, insulation, light bulbs, and sanitary paper, operated 53-foot semi-trailers[2] coupled to very short COE tractors.[3] These vehicles were legal in Pennsylvania on *all* roads and were operated in Pennsylvania prior to December 1, 1982. App. p. 39.

In late 1982, Congress passed the Surface Transportation Act of 1982 (STAA). The Act preempted state laws on commercial motor vehicles. The Act, *inter alia:*

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[2] Longer (fifty-three foot) trailers are generally used only by those hauling low density freight, because those hauling higher density freight reach the gross weight limit (80,000 pounds) before exceeding the volume of shorter trailers normally 45 feet or 48 feet in length.

[3] A COE, (cab over engine) tractor is a tractor in which the distance from the rear of the cab to the front of the cab is minimized. A conventional, or CBE (cab behind engine) tractor, is a longer tractor that has the engine mounted in front of the cab. The two are easily visually distinguished by the presence or absence of a projecting engine compartment and hood.

COE tractors were generally used with trailers longer than 45 feet in order to meet 60 foot overall length limits. Very short "slimline" COE tractors were used with 53-foot trailers.

1. Enlarged federal jurisdiction over commercial motor vehicles for certain safety regulations by changing the basis of that jurisdiction from vehicles engaged in interstate commerce to vehicles *affecting* interstate commerce. The Act defines vehicles affecting interstate commerce as commercial vehicles weighing over 10,000 lbs., or carrying more than 10 passengers, or carrying certain hazardous materials. 49 U.S.C. § 2301, 1982 U.S. Code Cong. and Admin. News, p. 3744.

2. Required the states to permit commercial motor vehicles consisting of 48-foot semi-trailers, or 28-foot twin trailers, on the Interstates and roads designated by the Secretary of Transportation. 49 U.S.C. §§ 2311(a), (c), 2316.

3. Imposed federal weight specifications on vehicles on the Interstates. 23 U.S.C. § 127.

4. Required each state to provide reasonable access for commercial motor vehicles to the Interstate and Designated Highways. 49 U.S.C. § 2312.

5. Prevented each state from prohibiting commercial motor vehicle semi-trailer and trailer lengths that had previously been legally operated in the state. 49 U.S.C. § 2311(b).

6. Prohibited each state from imposing overall length limits on commercial motor vehicles in order to encourage use of safer long tractors. 49 U.S.C. § 2311(b).

The last provision is the specific subject of this case.

In response to the STAA, Pennsylvania amended its statutes. On Interstates and Designated Highways, Penn-

sylvania eliminated overall length limits on semi combinations with trailers 48 feet or less in length, but retained an overall length limit of 60 feet on semi combinations with trailers over 48 feet. 75 Pa. C.S.A. § 4923(a) (Supp. 1983-1984) App. pp. 42, 54. On other roads Pennsylvania imposed a 60-foot overall length limit regardless of trailer length. 75 Pa. C.S.A. § 4923(a).[4]

Parties

Plaintiffs, Continental Can Company, Inc. and Owens-Illinois, Inc. are shippers of light, low density freight who have manufacturing facilities in and around Pennsylvania. Plaintiffs, National Freight, Inc. and Dart Transit Company, are irregular route interstate carriers who operate 53-foot trailers providing service to shippers of low density freight. Plaintiff carriers operate 53-foot trailers in numerous states.

Subsequent to STAA both carrier Plaintiffs began replacing their short tractors with longer tractors.[5] As a result, plaintiff Dart no longer owns or leases tractors that can haul 53-foot trailers within Pennsylvania's new law, and plaintiff National has partially replaced its tractor fleet with longer tractors. App. pp. 39, 43. As a

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[4] Pennsylvania does allow auto carriers up to 65 feet in overall length (plus overhang) on all roads. In addition, Pennsylvania allows indivisible loads of up to 70 feet without any restrictions as to roads or the overall length of the vehicle combination. 75 Pa. C.S.A. § 4923(b) (5).

[5] This process of replacement of short tractors with long tractors was precisely what Congress intended. See App. pp. 49-54.

result of the Pennsylvania law the shipper plaintiffs were unable to obtain the needed level of service with 53-foot trailers for their interstate operations because of the inability or reluctance of carriers to maintain segregated fleets of short tractors to meet the Pennsylvania law. App. pp. 43-44.

Proceedings Below

Plaintiffs filed suit on December 2, 1983 seeking, *inter alia,* a declaratory judgment that the Pennsylvania law violated the STAA, and injunctive relief. Both sides moved for summary judgment based on an agreed stipulation of facts. App. pp. 37-45.

While this case was pending, in a separate case brought by the United States against Florida, the District Court for the Northern District of Florida held that a state law imposing overall length restrictions on any road was contrary to STAA. *United States v. Florida,* 585 F. Supp. 807, 810 (N.D. Fla. 1984). The District Court in the present case ruled for Plaintiffs on April 12, 1984. App. pp. 20-35. Subsequently, the Federal Highway Administration issued an interpretative ruling supporting Pennsylvania's position without noting either federal court case. 49 Fed. Reg. 23302 (June 5, 1984).

On appeal the Third Circuit reversed in part and affirmed in part. It held that the provisions of Pennsylvania's law which imposed overall length limits on Interstate and Designated Highways for 53-foot trailer combinations violated the STAA. However, the Circuit Court allowed

overall length limits off the Interstate and Designated Highways.[6]

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REASONS FOR GRANTING WRIT

The Third Circuit Court of Appeals noted, "The case raises important questions of statutory construction and the application of the Supremacy Clause." The import is greater because the Third Circuit decision is contrary to the two prior District Court decisions and contrary to a literal reading of the statute.

This Court should grant the writ because:

(1) It will determine whether a Congressional policy designed to promote highway safety will result in the practical effects that Congress intended.

(2) It will determine what conforming laws the fifty states and the District of Columbia must enact, a matter now in doubt.

(3) It will determine whether the transportation industry will buy the safer equipment Congress intended.

Implementing Congressional Policy

This case involves a single issue: will interstate trucks use long tractors or will they use short tractors.

That issue has been controversial for years. Some claimed that short tractors were less safe, while others

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[6] The Court remanded for consideration of other claims not raised in the Motion for Summary Judgment. These have been withdrawn by Plaintiffs.

claimed that the longer overall length that results from a long tractor would create greater safety problems. States, knowingly or accidentally, had historically sided with the second position by generally regulating truck size with overall length limits.

Congress considered and debated the issue. It made a policy decision that was clear-cut:

> "The record is abundantly clear that longer trucks are not per se less safe. Indeed, by eliminating limitations on cab lengths safety is positively improved." S. Rep. No. 97-248, 97th Cong., 1st Sess. 4 (1981).
>
> "While the prohibition on regulation of the overall length of trucks may seem to be a major change, as a practical matter it will not result in significantly larger trucks than are on the road today and it will assure that safety will not be jeopardized by undue restrictions on the power unit. The great bulk of truck length is contained in the cargo carrying unit that is still under regulation by the States. By focusing on trailer-size limitations only, there is no incentive to squeeze the truck cab down to an unsafe size in order to meet an overall length requirement. Moreover, the driver can assure that there is sufficient separation between the tractor and the trailer to provide optimum control of the vehicle and minimum weight on the front steering axle. With an overall length limit, often trucks must either be configured in a way that is less safe or else give up valuable cargo space to allow for more safe driving conditions. In the future, truckers will not have to face that dilemma." S. Rep. No. 97-248, 97th Cong., 1st Sess. 3 (1981).[7]

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[7] The STAA has a somewhat confusing legislative history. It was originally H. 6211, 97th Cong. 1st Sess. (1981). The

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The Third Circuit in its opinion reversed that policy decision. The Court of Appeals determined that a short tractor was safer than a long tractor on narrow roads and alleyways and therefore concluded that Congress could not have meant its policy decision to apply to all roads. App. p. 17.

In making this "safety" determination the Third Circuit both violated the rule of special deference to legislative determinations of safety and erred in its reliance on assumed matters outside of the record. *Raymond Motor Transportation v. Rice,* 434 U.S. 429, 444 n. 18 (1978). The Circuit Court assumed that the tractor length had an important effect on maneuverability. In fact, it does not, a fact recognized by Congress, but not the Third Circuit.

The Court of Appeals' decision is a true reversal of Congressional policy, even were the Third Circuit's narrow definition of that policy accepted, because the result of the Third Circuit's decision will not be that short tractors are used in alleys and long tractors on Interstates. The result will be that short tractors are used on all roads.[8]

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Senate amended H. 6211 in regard to size by substituting certain provisions from S. 1402, 97th Cong. 1st Sess. (1981), as it had been amended in the Senate Commerce Committee. These substitutions in regard to size were largely accepted by the Conference Committee, 1982 U.S. Code Cong. and Admin. News 3639. The grandfather clauses and overall length limit prohibitions were contained in the Senate Commerce Committee amendments to S. 1402. Since the Conference Committee report does little beyond paraphrasing the statute, the only source of legislative intent for these amendments is the Commerce Committee Report, S. Rep. No. 97-298, 97th Cong. 1st Sess. (1981). The relevant sections of the report are printed at App. pp. 49-54 and contain detailed statements of Congress' safety considerations.

[8] Carriers, particularly irregular route carriers such as plaintiffs National and Dart who do not normally tranship their

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State Legislatures and Industry Need Certainty

When STAA was passed the Federal Highway Administration noted that fifty states and the District of Columbia would have to pass conforming legislation. 48 Fed. Reg. 5210, 5211 (Feb. 3, 1983). Until passage of conforming legislation, STAA provided for federal preemption in the strongest terms. It has now been two and one-half years since STAA. FHWA has not yet finally designated highways,[9] and many of the states have yet to come into compliance.[10] Much of this delay can be attributed to reluctance to apply the law literally and confusion as to what the law means.

One of the factors complicating compliance has been the "no overall length" clause. The states have not been able to get clear guidance on the application of the clause. FHWA, the agency to which the Secretary delegated her powers under the Act, has not been reliable. It has equivo-

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freight in terminals, can neither practically nor economically retain short tractors in a state to handle operations off Interstate and Designated highways. If they must use short tractors for a part of the journey, they must use short tractors for the entire journey. App. pp. 43-44.

[9] See, e.g., 50 Fed. Reg. 12825 (April 1, 1985) in which FHWA notices its intent to review its prior designations, in accord with a settlement.

[10] See, e.g., Comments and Request for Supplemental Filings and Other Relief, filed by 60 NR Committee (May 14, 1985), FHWA Docket No. 85-16. The Comments indicate disagreement in a number of states between trailer lengths allowed under state law and those legal under STAA. Though FHWA has not agreed or disagreed with the comments, it noted in its Notice of Proposed Rule Making that many of the FHWA proposed trailer lengths were "new." 50 Fed. Reg. 8342, 8344 (March 1, 1985).

cated, sometimes adopting state positions and sometimes ducking the question. When it finally issued a firm statement, it adopted in its entirety Pennsylvania's position—immediately after the District Court in this case had held that position invalid.[11] Almost incredibly, the FHWA pronouncement took no notice of the two prior adverse court decisions, in one of which the United States itself had been a party. *United States v. Florida,* 585 F. Supp. 807 (N.D. Fla. 1984); 49 Fed. Reg. 23302 (June 5th, 1984).

Nor can the states rely on a literal reading of the statute, for neither FHWA nor the Third Circuit supports a literal reading. The pertinent sentence says:

> "No State shall establish, maintain, or enforce any regulation of commerce which imposes an overall length limitation on commercial motor vehicles operating in truck-tractor semitrailer or truck-tractor semitrailer, trailer combinations."

That appears clear enough. The Third Circuit, however, refused the literal reading, through adroit, if somewhat one-sided reasoning. The Court held that the sentence was limited to Interstate and Designated Highways because of the title of the provision,[12] the prior sentence, and the

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[11] The Third Circuit noted in regard to a part of Pennsylvania's position adopted by FHWA: "We see no merit to this argument." App. p. 9.

[12] The Third Circuit's reliance on the title is misplaced. App. p. 14. "Federal Aid" highways include Interstates, primary roads, secondary roads and urban roads, a far broader collection than Interstates and Designated Highways. 23 U.S.C. § 103. "Federally assisted highways" is a broader still designation that includes all public roads under various programs not limited to federal-aid roads, e.g., 23 U.S.C. §§ 152, 219. The title uses the words "Length Limitations on Federally Assisted Highways."

reasonable access clause. None of these are likely to appear definitive to a state attempting to determine what to do. All are ambiguous indicators, and are more than balanced out by others, which the Third Circuit chose to ignore. The Secretary, for instance, is notably not given authority to designate highways for the "no overall length" clause, suggesting that Congress did not envision limitation of that clause to Interstates and Designated Highways. 49 U.S.C. § 2311(e).

Just as the states are confused, so are the carriers. The carriers must make a decision as they retire old equipment and order new. If the Third Circuit interpretation is correct then they should order short tractors. If the District Courts are correct and the Third Circuit wrong, they should order long tractors. With uncertainty, the conservative choice is to purchase short tractors contrary to the expressed desire of Congress.

Regardless of the merits of the arguments, the current situation is one of confusion in a situation where the states and carriers must act. The confusion is particularly damaging since the purposes of the Act include national uniformity and promotion of highway safety. Only a ruling from this Court can end the confusion and implement a uniform national policy.

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CONCLUSION

For these reasons this Court should grant a writ of certiorari to review the judgment and opinion of the Third Circuit.

Respectfully submitted,

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July 19, 1985

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

NATIONAL FREIGHT, INC., Dart Transit Company, Owens-Illinois, Inc., Continental Can Company, Inc.

v.

Thomas D. LARSON, Secretary of Transportation; Daniel Dunn, Commissioner of Pennsylvania State Police; LeRoy S. Zimmerman, Attorney General; Richard Thornburgh, Governor, Appellants.

No. 84-5388.

United States Court of Appeals,
Third Circuit.

Argued Feb. 11, 1985.

Decided April 23, 1985.

Before GARTH, BECKER and ROSENN, Circuit Judges.

OPINION OF THE COURT

ROSENN, Circuit Judge.

Historically, subject to the strictures of the commerce clause of the federal constitution, states have regulated the speed, safety and travel of vehicles on their public highways, including the regulation of truck size and the overall length of semi-trailer combinations. In 1982 Congress ventured into this area of highway regulation by enacting the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. § 2301 et seq., which addressed, and to some extent preempted state laws and regulations concerning, the size, weight, and configuration limits for tractor-trailers. The Commonwealth of Pennsylvania thereupon

amended its vehicle code in response to this new federal law, retaining an overall length limit of 60 feet on semi-combinations with trailers over 48 feet[1] on the "National Network"[2] and continuing to impose a 60-foot overall length limit regardless of trailer length on other roads. *See* 75 Pa.C.S.A. § 4923(a) (Supp. 1983-84).

Although both the federal and state statutes are, at least in part, intended to protect the safety of persons on the public highways, the construction by the Commonwealth of Pennsylvania of Congress' legislation and a differing construction by truckers and shippers of goods produced a collision in views between the parties culminating in this litigation. The case raises important questions of statutory construction and the application of the supremacy clause of the federal constitution. The district

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1. The use, in Pennsylvania, of a trailer exceeding 48 feet in length essentially involves reliance of the "grandfather clause" of the STAA which provides: "No State shall establish, maintain, or enforce any regulation of commerce which has the effect of prohibiting the use of trailers or semi-trailers of such dimensions as those that were in actual and lawful use in such State on December 1, 1982." 49 U.S.C. § 2311(b). Pennsylvania currently imposes a trailer length limit of 48 feet unless the overall length of the motor vehicle does not exceed 60 feet. *See* 75 Pa.Cons. Stat.Ann. § 4923(b) (6). The 60 foot overall length limitation was the general requirement in the older version of the Pennsylvania vehicle code.

2. The term "National Network" will be used to refer to that system of roads described in the federal statute as the "National System of Interstate and Defense Highways and those classes of qualifying Federal-aid Primary System highways as designated by the Secretary," 49 U.S.C. § 2311 (a), and described in the state statute as including "interstate and certain primary highways," 75 Pa.Cons.Stat.Ann. § 4923(b)(6) (Purdon 1984) (referring to 75 Pa.Cons.Stat. Ann. § 4908).

court held that Pennsylvania's 60-foot overall length limitation conflicts with the STAA and that the federal prohibition of overall length limitations applies to all public highways within a state, not just those constituting the National Network. 583 F.Supp. 1461. We affirm as to the first issue, but reverse as to the second.

I.

Most states, acting under the police powers reserved to them by the Constitution, have regulated the overall length of semi-trailer combinations, the predominant limit being sixty feet. Pennsylvania truck size regulations conformed to the majority of the states. For example, on June 18, 1980, Pennsylvania amended its vehicle code by increasing the maximum allowable overall length of tractor-semi-trailer combinations from 55 to 60 feet. *See* Act 1980-68, June 19, P.L. 229, 75 Pa.Cons.Stat. § 4923(a) (Supp. 1983-84). PJennsyvania law did not regulate trailer length *per se*. However, by reason of the sixty foot overall length limitation, the statute put a practical limitation on trailer length at fifty-three feet, the smallest available tractor being seven feet long. At the time Pennsylvania amended its vehicle code in 1980, the federal government imposed no standards on either trailer or overall length.

When Congress passed the STAA in 1982, the Act in relevant part: (1) required the states to permit commercial motor vehicles consisting of 48-foot semi-trailers, or 28-foot twin trailers, on the National Network, *see* 49 U.S.C. §§ 2311(a) & (c); (2) forbade each state from prohibiting commercial motor vehicle semi-trailer and trailer lengths that had previously been legally operated in the

state, *see* 49 U.S.C. § 2311(b); and (3) prohibited each state from imposing overall length limits on most commercial motor vehicles, including semi-trailer combinations, *see* 49 U.S.C. § 2311(b).[3]

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3. The relevant provisions reads as follows:

§ 2311. *Length limitations on federally assisted highways.*
(a) Prohibition against certain length limitations on semitrailers and trailers

No State shall establish, maintain, or enforce any regulation of commerce which imposes a vehicle length limitation of less than forty-eight feet on the length of the semitrailer unit operating in a truck tractor-semitrailer combination, and of less than twenty-eight feet on the length of any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination, on any segment of the National System of Interstate and Defense Highways and those classes of qualifying Federal-aid Primary System highways as designated by the Secretary, pursuant to subsection (e) of this section.

(b) Nonapplicability of limitations to truck tractors; prohibition against overall length limitations on truck-tractor semitrailer or truck-tractor semitrailer, trailer combinations; prohibition against regulation of commerce prohibiting use of certain trailers and semitrailers.

Length limitations established, maintained, or enforced by the State under subsection (a) of this section shall apply solely to the semitrailer or trailer or trailers and not to a truck tractor. No State shall establish, maintain, or enforce any regulation of commerce which imposes an overall length limitation on commercial motor vehicles operating in truck-tractor semitrailer or truck tractor semitrailer, trailer combinations. No State shall establish, maintain, or enforce any regulation of commerce which has the effect of prohibiting the use of trailers or semitrailers of such dimensions as those that were in actual and lawful use in such State on December 1, 1982. No State shall establish, maintain, or enforce any regulation of commerce which has the effect of prohibiting the use of existing trailers or semitrailers, of up to twenty-eight and one-half feet in length, in a truck trac-

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In response to the STAA, Pennsylvania amended its vehicle code. *See* 1983 Pa. Legis.Serv. 83 (Purdon) (Act No. 1983-19). On the National Network, Pennsylvania eliminated overall length limits on semi-combinations with trailers 48 feet or less in length, but retained an overall length limit of 60 feet on semi-combinations with trailers over 48 feet. *See* 75 Pa.Cons.Stat.Ann. § 4923(b)(6) (Supp. 1984-1985). On other roads, Pennsylvania imposed a 60-foot overall length limit regardless of trailer length. *See* 75 Pa.Cons.Stat.Ann. § 4923(a). The language of 75 Pa.Cons.Stat.Ann. § 4923 is set out in the margin.[4]

(Continued from previous page)

tor-semitrailer-trailer combination if those trailers or semitrailers were actually and lawfully operating on December 1, 1982, within a sixty-five-foot overall length limit in any State.

(c) Prohibition by State of combination of truck tractor and two trailing units forbidden

No state shall prohibit commercial vehicle combinations consisting of a truck tractor and two trailing units on any segment of the National System of Interstate and Defense Highways, and those classes of qualifying Federal-aid Primary System highways as designated by the Secretary pursuant to subsection (e) of this section.

Minor amendments to the STAA were recently passed. *See* Tandem Truck Safety Act of 1984, Pub.L. No. 98-554, 98 Stat. 2829.

4. § 4923. *Length of vehicles*

(a) General rule.—Except as provided in subsection (b), no motor vehicle, including any load and bumpers, shall exceed an overall length of 40 feet, and no combination, including any load and bumpers, shall exceed an overall length of 60 feet.

(b) Exceptions.—The limitations of (a) do not apply to the following:

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Plaintiffs, interstate shippers and carriers who desire to use 53-foot truck trailers throughout Pennsylvania without any limitations on the length of the truck tractor, brought suit in the United States District Court for the Middle District of Pennsylvania claiming that the Pennsylvania legislation of 1983 is contrary to federal law and, therefore, violative of, *inter alia,* the supremacy clause and commerce clauses of the federal constitution. Prior to the passage of the STAA, plaintiffs had legally operated, or made use of, 53-foot trailers in Pennsylvania. Pursuant to Pennsylvania law, however, these trailers were operated within a 60-foot overall length limit. Thus, the length of the trailer plus the tractor did not exceed 60 feet. Plaintiffs now desire to use 53-foot trailers both on and off the National Network without any restrictions as to overall length, and they contend that the STAA requires Pennsylvania to permit such operations. The parties entered into a stipulation of facts after which each side moved for summary judgment. Plaintiffs' motion was limited to their claim under the supremacy clause.

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* * * *

(5) A combination designed and used exclusively for carrying motor vehicles if the overall length of the combination and load does not exceed 65 feet.

(6) Any combination consisting of a truck tractor and one or two trailers, when driven as described in section 4908 (relating to operation of certain combinations on interstate and certain primary highways), provided that, except when being operated as a part of a combination of a tractor and single trailer not exceeding an overall length of 60 feet, the length of a single trailer shall not exceed 48 feet and the length of each double trailer shall not exceed 28 feet.

On April 12, 1984, the district court granted plaintiffs' motion for summary judgment.[5] The district court held, first, that Pennsylvania's 60-foot overall length limitation conflicts with the STAA and therefore was improper, even as applied to vehicles with trailers longer than 48 feet that are operating under the grandfather clause of the STAA, 49 U.S.C. § 2311(b). The court then held that the provision in subsection (b) of section 411 of the STAA (42 U.S.C. § 2311(b)), prohibiting overall length limitations, applied to all roadways within a state, not just those constituting the National Network. In so holding, the court declared sections 4923(a) and 4923(b)(6) of the Pennsylvania Motor Vehicle Code violative of the supremacy clause. The district court, and subsequently this court, denied a motion for partial stay pending appeal.

Subsequent to the district court's decision, the Federal Highway Administration (FHWA) promulgated a "final rule" which interpreted the STAA in the manner advocated by the defendants herein and contrary to the decision of the district court. The FHWA interpreted the STAA to mean that states could impose overall length limits on the National Network for tractor-trailers with trailers longer than 48 feet, if the states imposed overall length limits prior to enactment of the law. Moreover, the FHWA concluded that states were free to impose any overall length limit on highways other than those constituting the National Network. *See* 49 Fed.Reg. 23,302

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5. Prior to the district court's decision, a United States District Court for the Northern District of Florida came to the same conclusion as the district court in the instant case. *See United States v. Florida,* No. TCA 83-7333 (N.D.Fla. Mar. 2, 1984) (holding that state law imposing overall length restrictions on any road was contrary to STAA).

(1984). Subsequent to this FHWA interpretation, the plaintiffs filed a motion to remand for the purpose of joining the FHWA and its officials. This motion has since been withdrawn.[6]

II.

The first issue before this court is whether, under the STAA, states can impose overall length limits on tractor-trailers with trailers longer than 48 feet, if the states imposed overall length limits prior to the enactment of the law. In essence, we are required to decide whether the "grandfather clause" of the STAA permits states to enforce length limitations in cases where the clause is relied upon. The defendants' position is that the grandfather clause was not intended to broaden the situations in which trailers longer than 48 feet can be operated. In the defendants' view, therefore, the plaintiffs are entitled to operate 53-foot trailers only as they were operated in Pennsylvania before the passage of the STAA, that is, in combination with tractors of seven feet or less. The plaintiffs rejoin that the STAA preempts any state regulation of overall length as such. They further urge that the grandfather clause requires Pennsylvania, which previ-

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6. Plaintiffs moved for remand of this matter in order to (1) afford the FHWA an opportunity to defend its rule, and (2) promote judicial economy. By remand, it was hoped that the FHWA could be added as a party and that the entire matter could be disposed of by two "trials" and one appeal rather than two trials and presumably two appeals.

   The FHWA, however, subsequently indicated that it did not desire to defend its rules in this proceeding. Furthermore, the hearing on the motion for remand was consolidated with the merits of this appeal. Thus, neither of the reasons noted above remained valid and plaintiffs withdrew the motion.

ously allowed certain 53-foot trailers to operate on its highways, now to allow trailers of this length to operate without regard to the overall length of the combinations of which the trailers are a part.

The "grandfather clause" provides that "[n]o State shall establish, maintain, or enforce any regulation of commerce which has the effect of prohibiting the use of existing trailers or semi-trailers, of such dimensions as those that were in actual and lawful use in such State on December 1, 1982." 49 U.S.C. § 2311(b). On December 1, 1982, Pennsylvania had in effect a 60-foot overall length limitation. After the passage of the STAA, Pennsylvania amended its vehicle code and abolished the pre-existing 60 foot limitation for combination vehicles operating on the National Network so long as the length of a single-trailer did not exceed 48 feet (and the length of each twin trailer did not exceed 28 feet). The defendants argue that if a trailer is greater than 48 feet long, thus essentially requiring reliance on the grandfather clause, then the 60 foot overall length limitation is lawful and applicable. We see no merit to this argument.

When interpreting a statute, the starting point is of course the language of the statute itself. *See American Tobacco Co. v. Patterson,* 456 U.S. 63, 68, 102 S.Ct. 1534, 1537, 71 L.Ed.2d 748 (1982). If the language is clear and unambiguous, and there is no "clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Product Safety Commission v. GTE Sylvania, Inc.,* 447 U.S. 102, 108, 100 S.Ct. 2051, 2056, 64 L.E.2d 766 (1980).

In the instant case, the federal statute is clear in its prohibition of overall length limits as applied to single-

trailer combinations. The relevant provision unambiguously requires that "[n]o State shall establish, maintain or enforce any regulation of commerce which imposes an overall length limitation on commercial motor vehicles operating in truck-tractor semitrailer or truck tractor semitrailer, trailer combinations." 49 U.S.C. § 2311(b). This provision speaks of no exception to the broad and clear prohibition of overall length limitations.[7] Even if the defendants' position were accepted and Pennsylvania's 60-foot overall length limitations were seen as a "condition" that existed prior to the STAA's enactment for the operation of long trailers, any such "condition" is now clearly outlawed by the STAA and does not continue today under the grandfather clause. Thus, to currently impose such a condition on vehicles traveling on the National Network violates the supremacy clause of the federal constitution.

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7. The only exception to be found anywhere in the statute appears in the last sentence of 49 U.S.C. § 2311(b). This sentence provides as follows:

> No State shall establish, maintain, or enforce any regulation of commerce which has the effect of prohibiting the use of existing trailers or semitrailers, of up to twenty-eight and one-half feet in length, in a truck tractor-semtrailer-trailer combination if those trailers or semitrailers were actually and lawfully operating on December 1, 1982, within a sixty-five-foot overall length limit in any State.

This sentence, however, is very narrow, applies only to double trailers, and is crafted to protect those fleets, in particular a fleet with over 5,000 such vehicles, that used 28-½ foot doubles trailers as opposed to the 28 foot trailers established as the uniform standard doubles trailer by 49 U.S.C. § 2311(a). *See* H.R.Rep. No. 555, 97th Cong., 2d Sess. 23-24, *reprinted in* 1982 U.S. Code Cong. & Ad. News 3639, 3661-62.

Nothing in the language of the grandfather clause itself changes this result. The grandfather clause speaks to *trailer* size limitations that were in effect before Congress enacted the federal law. The clause indicates that, although the new federal law allows a law mandating a 48-foot maximum length trailer, a state that had previously allowed a trailer length in excess of 48 feet cannot now reduce and bring the size within that limitation. Prior to the federal law, Pennsylvania had an overall length limitation law in effect on combination tractor-trailers—a type of law that is now prohibited. This law permitted, in practical terms, a 53-foot trailer when used with a 7-foot long tractor. Under the terms of the grandfather clause of the STAA, Pennsylvania may not now prohibit the use of trailers on the National Network that are up to 53 feet in length. Although Pennsylvania had no statute permitting trailers 53 feet in length, its interpretation of its overall length limitation law permitted such a practice. The language of the STAA grandfather clause is not predicated on state statutory provisions specifically permitting trailers in excess of 48 feet in length, but upon whether trailers "of such dimensions . . . were in actual and lawful use" in the state on December 1, 1982. Fifty-three foot trailers "were in actual and lawful use" in Pennsylvania on December 1, 1982. Thus, the STAA grandfather clause requires that Pennsylvania, given the practical effect of its previous law, allow 53-foot trailers on the National Network, not that it continue to allow, as Pennsylvania argues, 53-foot trailers only as part of 60-foot overally length tractor-trailer combinations. Regardless of what Pennsylvania's or our views may be concerning the operation and safety of trailers of such length, trailers up to 53 feet in length must be allowed on the

National Network in Pennsylvania in light of the previous practice even if pulled by a tractor of such length that the combination exceeds 60 feet.

This reading is in conformity with the legislative history of the STAA. In including within the federal statute a prohibition against the use of overall length limitations, Congress apparently desired to reduce the use of the dangerous "short tractors" that had been developed in response to the various state overall length limitation laws.[8] This safety concern is plainly expressed in a report of the Senate Committee on Commerce, Science, and Transportation. *See* S.Rep. No. 298, 97th Cong., 1st Sess. 2(1981).[9]

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8. The short tractor was developed so that most of the allowable length of the combination would be in the cargo carrying *trailer*. These short tractors—e.g., the "cab over engine" variety—provide less protection for the driver than the longer "cab behind engine" variety.

9. In relevant part, the report states:

> While the prohibition on regulation of the overall length of trucks may seem to be a major change, as a practical matter it will not result in significantly larger trucks than are on the road today and it will assure that safety will not be jeopardized by undue restrictions on the power unit. The great bulk of truck length is contained in the cargo carrying unit that is still under regulation by the States. *By focusing on trailer-size limitations only, there is no incentive to squeeze the truck cab down to an unsafe size in order to meet an overall length requirement.* Moreover, the driver can assure that there is sufficient separation between the tractor and the trailer to provide optimum control of the vehicle and minimum weight on the front steering axle. With an overall length limit, often trucks must either be configured in a way that is less safe or else give up valuable cago space to allow for more safe driving

(Continued on following page)

To continue to impose overall length limits on the many trucks relying on the grandfather clause of the STAA would result in the continued use of short tractors and a frustration of one of the purposes Congress had for passing the STAA.

As noted earlier, the FHWA interpretation is contrary to our analysis of this issue. This, however, does not change the result. It is true that the interpretation of the agency charged with the implementation of a statute is generally accorded substantial deference. *See Blum v. Bacon,* 457 U.S. 132, 141, 102 S.Ct. 2355, 2361, 72 L.Ed.2d 728 (1982); *Udall v. Tallman,* 380 U.S. 1, 16, 85 S.Ct. 492, 801, 13 L.Ed.2d 616 (1965). The question before this court, however, is a matter of pure statutory construction. In such a case, agency expertise is not controlling; the question is one which the courts are relatively more able to answer. See *Barlow v. Collins,* 397 U.S. 159, 166, 90 S.Ct. 832, 837, 25 L.E.2d 192 (1970); *Cleary v. United States*

(Continued from previous page)

conditions. In the future, truckers will not have to face that dilemma.

S.Rep. No. 298, 97th Cong., 1st Sess. 2 (1981) (emphasis added). It is true that this report concerned a bill, S. 1402, 97th Cong., 1st Sess. (1981), that was never actually passed. Nevertheless, the grandfather clause and overall length limit contained in the Senate version were ultimately incorporated into the House bill, H.R. 6211, 97th Cong., 1st Sess. (1981), that was adopted and passed into law. *Cf.* H.R. Conf.Rep. No. 987, 97th Cong., 2d Sess. 132-34, *reprinted in* 1982 U.S. Code Cong. & Ad. News 3692, 3713-15. Since the Conference Committee report, *see id.*, and the House report, *see* H.R.Rep. No. 555, 97th Cong., 2d Sess. 22-25, *reprinted in* 1982 U.S.Code Cong. & Ad. News 3639, 3660-63, do little more than paraphrase the statute, it is not unreasonable to make reference to the Senate report that considered the provisions.

Lines, 728 F.2d 607, 610 n. 6 (3d Cir.1984); *Hi-Craft Clothing Co. v. NLRB*, 660 F.2d 910, 914-15 (3d Cir. 1981).

III.

The second issue that this court must consider is whether § 411 of the STAA, 499 U.S.C. § 2311, prohibits the states from enforcing overall length limitations on roads which are not a part of the National Network. A review of section 2311 suggests that it was meant to apply only to the National Network, a conclusion supported by the very title of the section: "Length limitations on federally assisted highways." The plaintiffs, however, argue that only subsections (a) and (c) of section 2311 mention the National Network, and thus subsection (b), which is the subsection that contains the prohibition against overall length limitations, should not be seen as limited to only that system of roads. The plaintiffs admit that the first sentence of subsection (b) refers to subsection (a), which, as just noted, refers to the National Network. The plaintiffs, however, maintain that the remaining provisions in subsection (b), including the overall length limit prohibition, should be read as separate sentences that address state regulations on *any* highway. We do not agree.

It is true that subsections (a) and (c), and not (b), specifically refer to the National Network. Subsection (a) prohibits a state from imposing a length limitation of less than 48 feet for a single trailer operating on the National Network. Subsection (c) forbids a state from prohibiting the operation of twin trailers on the National Network. This does not mean, however, that the absence, in subsection (b), of an explicit reference to the National Network makes the subsection applicable to all roads.

Rather, we read that subsection as essentially clarifying, and placing limits on, the more substantive provisions contained in subsections (a) and (c).[10] For example, the first two sentences of subsection (b), and the two sentences most relevant to the present discussion, are properly seen as clarifying the reference to length limits established under subsection (a) so as to limit its application only to the trailer and not to the overall vehicle. The language of these two sentences is as follows:

> Length limitations established, maintained, or enforced by the States under subsection (a) of this section shall apply solely to the semitrailer or trailer or trailers and not to a truck tractor. No State shall establish, maintain, or enforce any regulation of commerce which imposes an overall length limitation on commercial motor vehicles operating in truck-tractor semitrailer or truck tractor semitrailer, trailer combinations.

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10. This approach of viewing subsection (b) as essentially only adding a "gloss" to the discussion of vehicle lengths and allowable combinations presented in subsections (a) and (c), helps explain the wording of 49 U.S.C. § 2311(e)(1). This subsection provides that "[t]he Secretary shall designate as qualifying Federal-aid Primary System highways *subject to the provisions of subsections (a) and (c)* of this section those Primary System highways that are capable of safely accommodating the vehicle lengths set forth therein." (Emphasis added.) The absence of any mention of subsection (b) is, according to the approach we adopt, due to subsections (a) and (c) being the only provisions that have a "direct" impact. Any impact that subsection (b) has is "through" subsections (a) and (c)—either by way of clarification (i.e., the "overall length limitation" provisions) or exception (i.e., the grandfather clause). This same analysis explains the similar emphasis on subsections (a) and (c) found in the recent amendments to the STAA. *See* Tandem Truck Safety Act of 1984, Pub.L. No. 98-554, § 102, 98 Stat. 2829, 2829.

49 U.S.C. § 2311(b). The first sentence, by itself, implicitly prohibits the imposition of overall length limits. Because limitations may apply only to the semi-trailer and not the tractor, there can be no limitation imposed on the overall combination of the two. The implication of this provision is clear, though not directly stated. The second sentence does state it directly: it prohibits any "overall length limitation." The latter sentence, then, would appear to be merely a clarification of what is contained in the first sentence—a sentence which by its very terms (that is, by virtue of the reference therein to subsection (a)) applies only to the National Network.

That the overall length limitation prohibition is applicable only to the National Network is further supported by the argument that 49 U.S.C. § 2312 would be rendered superfluous if section 2311(b) were seen as applying to all roads. Section 2312 reads as follows:

> No State may enact or enforce any law denying reasonable access to commercial motor vehicles subject to this chapter between (1) the Interstate and Defense Highway System and any other qualifying Federal-aid Primary System highways, as designated by the Secretary, and (2) terminals, facilities for food, fuel, repairs, and rest, and points of loading and unloading for household goods carriers.

49 U.S.C. § 2312. This provision is not limited to twin trailers. Rather, it applies to all "commercial motor vehicles subject to this chapter," including the overall length of semi-trailer combinations permitted under section 2311. If Congress, in section 2311(b), had already required states to permit these vehicles on all of their public highways, there would clearly be no need for section 2312. Thus,

given the existence of section 2312, we believe that 49 U.S.C. § 2311 should not be seen as applying to all roads.

Our reading of the statute is not contrary to legislative intent. We do not believe that, in enacting this legislation, Congress intended to completely deprive the states of the power to regulate vehicle lengths, even as to roadways off the National Network. In particular, it is difficult to believe that Congress desired to preempt state vehicle length laws as to every street, road, and alleyway in a state, thus potentially subjecting narrow streets in densely populated areas and narrow country roads to tractor-trailers seventy feet or more in length. One of the main purposes of Congress in passing the STAA was to enhance interstate commerce. *See* H.R.Rep. No. 555, 97th Cong., 2d Sess. 23 *reprinted in* 1982 U.S. Code Cong. & Ad.News 3629, 3661. This is clearly accomplished by requiring all states to permit the operation of 48-foot trailers and twin trailers on any segment of the National Network. Limiting the application of the statute to the National Network should not in any way impede interstate travel inasmuch as the Network clearly includes all interstate highways and section 2312 provides for reasonable access to terminals and facilities for food, fuel, repairs, and rest off the Network as well as points of loading and unloading for household goods carriers. Furthermore, this interpretation allows for the use of the safer "long" tractors on the National Network, although it is true that the shorter tractors may still need to be used for general travel off the National Network in Pennsylvania. Congress, however, was concerned with long distance hauling and meant to deal only with the National Network, leaving the regulation of tractor-trailer size off this Network to

the discretion of the states. This is reflected in the legislative history with respect to section 2312 in which the House report states that "this provision [§ 2312] is not intended to preempt a State's reasonable exercise of its police powers with respect to safeguarding public safety on roads within the area of its jurisdiction." H.R. Report No. 555, *supra,* at 3662.

The political dynamics of the passage of the Act are also worthy of note. As suggested above, one of the purposes of Congress in passing the STAA was to improve the productivity of truckers by establishing more uniform weight and length limits on federal roads across the country. The apparent *quid pro quo* for this beneficial legislation was a five cent per gallon increase in the gasoline tax and the imposition of higher fees and taxes on heavy trucks.[11] A reading of the legislation indicates that the lion's share of these additional taxes inured to the benefit of the National Network highway system, and not otherwise to the benefit of the states. *See* H.R. Report No. 555, *supra,* at 3639-42. This provides additional support for our conclusion that Congress intended that the

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11. See H.R.Report No. 555, *supra,* at 3661.

> As proposed by the Reagan Administration, the new program would include higher fees and taxes on heavy trucks used by commercial trucking companies. In return, there would be an attempt to improve the productivity of truckers by establishing uniformly higher truck weight and length limits on *Federal* roads across the country. A new 80,000-pound minimum would be in effect.
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> N.Y. Times, Nov. 30, 1982, at B10, col. 1 (emphasis added).

Act's new vehicle weight and size provisions be limited to the National Network.[12]

IV.

In summary, we agree with the district court that the STAA's prohibition against overall length limitations on semi-trailer combinations using the National Network is unequivocal and prevents the use of such limitations even with respect to trucks operating under the grandfather clause. Accordingly, that portion of the district court's judgment will be affirmed. On the issue of whether 49 U.S.C. § 2311(b) applies to all roads or only those constituting the National Network, however, we conclude that the provision is applicable only to the Network. As to this second issue, the judgment of the district court will be reversed and the case remanded for consideration of the plaintiffs' remaining claims.[13]

Each side to bear its own costs.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Middle District

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12. Our conclusion that section 2311(b) is applicable only to the National Network is consistent with the FHWA's similar interpretation. *See* 49 Fed.Reg. 23,302-23,329 (1984) ("final rule" effective June 5, 1984). As noted earlier, this interpretation is not in any way controlling here, but we mention it in the interest of completeness. *Cf. Barnes v. Cohen*, 749 F.2d 1009, 1016 (3d Cir. 1984).

13. We have concluded that Pennsylvania's application of an overall length limitation to vehicles off the National Network does not violate the supremacy clause. The plaintiffs' complaint, in addition to raising the supremacy clause issue, alleged that the vehicle length provisions of the Pennsylvania Motor Vehicle Code were violative of the commercial clause, the fourteenth amendment, and 42 U.S.C. § 1983. The district court did not reach these latter issues.

of Pennsylvania and was argued by counsel February 11, 1985.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, entered April 12, 1984, as amended by the order of April 16, 1984, be, and the same is hereby affirmed insofar as the STAA prohibition against overall length limitations on semi-trailer combinations using the National Network is unequivocal and prevents the use of such limitations even with respect to trucks operating under the grandfather clause. It is further ordered and adjudged that the judgment of the said District Court is reversed insofar as it decided the issue of whether 49 U.S.C. § 2311(b) applies to all roads of only those constituting the National Network.

It is further ordered and adjudged that the cause be remanded to the said District Court for consideration of the plaintiff's remaining claims. Each side to bear its own costs. All of the above in accordance with the opinion of this Court.

ATTEST: /s/ Sally Mavros, Clerk

April 23, 1985

NATIONAL FREIGHT, INC., a New Jersey corporation; Dart Transit Company, a Minnesota corporation; Owens-Illinois, Inc., an Ohio corporation; and Continental Can Company, Inc., a Delaware corporation, Plaintiffs.

v.

Thomas D. LARSON, Secretary of Transportation; Col. Daniel F. Dunn, Commissioner of State Police; Leroy S. Zimmerman, Attorney General; and Hon. Richard Thornburgh, Governor, Defendants.

Civ. A. No. 83-1733.

United States District Court,

M.D. Pennsylvania.

April 12, 1984.

As Amended April 16, 1984.

MEMORANDUM

HERMAN, District Judge

I. INTRODUCTION

Before us are the parties' cross-motions for summary judgment. Plaintiffs are interstate shippers and carriers who desire to use 53-foot truck trailers throughout Pennsylvania without any limitations on the length of the truck tractor. Defendants argue that, pursuant to Pennsylvania's most recent amendment to its Vehicle Code,[1] 53-foot trailers cannot be used legally on *any* highway unless the overall length of the truck tractor and trailer is 60 feet. Plaintiffs claim that the portions of the Pennsylvania statutes which regulate overall length and trailer length conflict with the federal Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. §§ 2301-2315, and are invalid under the Supremacy Clause.

While the issues presented engender much public interest and debate, the constitutional aspects are not complicated. The Supremacy Clause of the United States Constitution provides that the laws of the United States "shall be the supreme Law of the Land, and Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Const., Art. VI. The doctrine of federal supremacy is clear: any state law that conflicts with federal law must give way. This is particularly pertinent in the area of interstate commerce where:

> [the] history of law has established beyond the slightest doubt that Congress has pre-eminent authority under the Commerce Clause of the Constitution, Art. 1, § 8, to legislate where activities affecting interstate

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1. Vehicle Code, 75 Pa.C.S.A. § 4923 (Supp.1983-1984), *as amended,* 1983 Pa.Legis.Serv. 83 (Purdons) (Act. No. 1983-19).

> commerce are concerned, to pre-empt those state laws in conflict with congressional enactments, and to prohibit state regulations concerning activities having a substantial effect on interstate commerce even in the absence of any contradictory congressional enactments.

United States v. State Of Connecticut, 566 F.Supp. 571, 574 (D.Conn.1983) (footnote omitted), *aff'd*, No. 83-6159 (2d Cir. Sept. 1, 1983), *aff'd*, — U.S. —, 104 S.Ct. 1263, 79 L.Ed.2d 670 (1984).[2]

Once Congress has acted in an area, it is not for the courts to question whether the federal law is less reasonable than any state statute. Rather, it is the court's duty to interpret the federal statute and to determine whether

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2. The Connecticut district court further enunciated the following:

> It has long been recognized that "[t]he power of Congress over interstate commerce is plenary and complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution," and that "no form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress," *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 119, 62 S.Ct. 523, 526, 86 L.Ed. 726 (1942). There can be no question at this late date that Congress has authority to pre-empt state laws regulating activity affecting interstate commerce. *Pacific Gas & Electric Co. v. State Energy Resources Conservation and Development Commission*, — U.S. —, —, 103 S.Ct. 1713, 1720-22, 75 L.Ed.2d 752 (1983). Indeed, Congress may, under the Commerce Clause, prohibit all state regulation (and not merely such regulation as is inconsistent with Federal law) where an activity having a substantial effect on interstate commerce is involved. *Hodel v. Virginia Surface Mining & Reclamation Association*, 452 U.S. 264, 290, 101 S.Ct. 2352, 2367, 69 L.Ed.2d 1 (1981). It follows that, where Congress explicitly preempts state regulation in a field, all laws of the states purporting to regulate activity in that field are overridden under the Supremacy Clause. *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624, 633, 93 S.Ct. 1854, 1859, 36 L.Ed.2d 547 (1973).

State Of Conn., 566 F.Supp. at 574 n. 6.

any portion of a competing state statute is inconsistent with the federal provisions and must be stricken. It is this task we face with the Surface Transportation Assistance Act and Pennsylvania's recent truck tractor-trailer length limitations.

II. THE COMPETING FEDERAL AND COMMONWEALTH STATUTES

A. The Federal Statute

On January 6, 1983, the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. § 2301-2315, was signed into law, to be effective by April 6, 1983. Section 411 of the Act, 49 U.S.C. § 2311, at first glance, appears to concern length limitations only as applied to federally assisted highways [the Designated Network].[3] Plaintiffs make a strong argument, however, that subsection (b) affects *all* highways within a state and not just those within the Designated Network. To best understand this issue, therefore, it is necessary to examine the pertinent subsections of section 411.

Subsection (a) provides that no state can enforce any regulation that imposes a vehicle length limitation of less than 48 feet on a semitrailer unit operating in a tractor-semitrailer combination on any segment of the Designated Network.[4] 49 U.S.C. § 2311(a).

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3. The federally assisted highways affected by the Act are the National System of Interstate and Defense Highways and classes of qualifying Federal-aid Primary System highways, as designated by the Secretary of Transportation pursuant to subsection (e). 49 U.S.C. §§ 2311(a), (c); 2312. For the purpose of this opinion, we will refer to these highways as the Designated Network.

4. Subsection (a) also prohibits state regulations of length limitations of less than 28 feet on a semitrailer or trailer unit operating in a tractor-semitrailer-trailer combination on any segment of the Designated Network. 49 U.S.C. § 2311(a).

Subsection (b) clarifies subsection (a) by seating that any state length limitation enforced by a state under subsection (a) shall apply *solely* to a semitrailer or trailer and *not to the truck tractor.* The statute further directs the following:

> *No State shall establish,* maintain, or enforce any regulation of commerce which imposes *an overall length limitation* on commercial motor vehicles operating in truck-tractor semitrailer or truck-tractor-semitrailer, trailer combinations. *No State shall establish,* maintain, or enforce *any regulation of commerce which has the effect of prohibiting the use of trailers or semitrailers of such dimensions as those that were in actual and lawful use in such State on December 1, 1982.* No State shall establish, maintain, or enforce any regulation of commerce which has the effect of prohibiting the use of existing trailers or semitrailers, of up to twenty-eight and one-half feet in length, in a truck tractor-semitrailer combination if those trailers or semitrailers were actually and lawfully operating on December 1, 1982, within a sixty-five-foot overall length limit in any State.

49 U.S.C. § 2311(b) (emphasis added).

Subsection (c) additionally forbids any state from prohibiting the operation of tandem trailers, which are truck tractors with two trailing units, on any segment of the Designated Network. This subsection has been upheld by the Supreme Court as a valid exercise of Congress' power of preemption on matters affecting interstate commerce. *United States v. State of Connecticut,* 566 F.Supp. 571 (D.Conn.1983), *aff'd,* No. 83-6159 (2d Cir. Sept. 1, 1983), *aff'd,* — U.S. —, 104 S.Ct. 1263, 79 L.Ed.2d 670 (1984).

B. The Pennsylvania Statute

Upon enactment of STAA, the Pennsylvania legislature amended its Vehicle Code to attempt to conform to STAA's provisions. Previously, Pennsylvania's statute directed that no motor vehicle combination could exceed an overall length of 60 feet. 75 Pa.C.S.A. § 4923(a) (Supp. 1983-1984). The amendment added an exception to this length limitation to "[a]ny combination consisting of a truck tractor and one or two trailers, when driven as described in section 4908 (relating to operation of certain combinations on interstate and certain primary highways), *provided that, except when being operated as a part of a combination of a tractor and single trailer not exceeding an overall length of 60* feet, the length of a single trailer shall not exceed 48 feet and the length of each double trailer shall not exceed 28 feet." 1983 Pa.Legis.Serv. 83, 90 (Purdons) (adding 75 Pa.C.S.A. § 4923 (b) (6)).

In other words, Pennsylvania permits the operation of trailers in excess of 48 feet in length on segments of the Designated Network as long as the overall length of the tractor-trailer unit is 60 feet or less. On all other state roads, the overall length limitation of any tractor-trailer combination remains 60 feet. 75 Pa.C.S.A. § 4923(a). Plaintiffs argue that this 60-foot length limitation for tractor-trailer units operating on the Designated Network and Pennsylvania's remaining roadways is in direct overall length limitations. Plaintiffs thus claim that Pennsylvania's length restriction must be invalidated.

III. ANALYSIS

Although parts of the federal and Pennsylvania statutory language are awkwardly phrased, certain aspects are

clear. First, under STAA, no state can prohibit the operation of trailers of 48 feet or less on any segment of the Designated System. 49 U.S.C. § 2311(a). The first sentence of subsection (b) makes it explicit that the 48-foot length limitation in subsection (a) applies only to trailers or semitrailers, and not to truck tractors. Secondly, to prevent the states from rolling back previous length limitations, no state can prevent the use of a trailer or semitrailer of such dimensions that were in actual and lawful use within the state as of December 1, 1982. 49 U.S.C. § 2311(b). Finally, the states cannot establish an overall length limitation for tractor-trailer units. *Id.*

The uncertain aspect of STAA, however, is whether the provisions in subsection (b) apply to all roadways within a state or just those highways within the Designated System. This is the question before us. Additionally, we must determine whether Pennsylvania's 60-foot overall length limitation conflicts with STAA. Since it is absolutely clear that subsection (b)'s prohibitions against state regulations apply to the Designated System at the very minimum, we will address the latter issue first.[5]

The parties have stipulated that as of December 1, 1982, Plaintiff National Freight, Inc., actually and legally operated 53-foot trailers in Pennsylvania. As Defendants admit, this 53-foot trailer length was not regulated *per se* by Pennsylvania statute. Rather, because of the 60-foot overall length limitation on the tractor-trailer unit, 75 Pa.C.S.A. § 4923(a), the *practical limitation* on the trailer

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5. See text at 1465-1466 *infra* for a discussion of the applicability of § 411(b) of STAA to all roadways within Pennsylvania.

length was 53 feet. Defendants' brief in support of summary judgment, at 7-8. The prior maximum permissible trailer length in Pennsylvania, thus, was 53 feet.[6] Under STAA, Pennsylvania now cannot prohibit the use of trailers less than 53 feet in length. 49 U.S.C. § 2311(b).

Furthermore, Pennsylvania cannot impose an overall length limitation on a tractor-trailer unit. Nevertheless, Pennsylvania's statute currently provides, in essence, that no tractor and single trailer combination can exceed an overall length of 60 feet when operated upon the Designated Network. In attempting to circumvent the clear statutory language of STAA, Defendants maintain that the 60-foot length limitation is merely a "condition" of operation of 53-foot trailers that existed prior to STAA's enactment and which continues today under STAA's grandfather clause.

We must reject Defendants' arguments on this point. Congress' explicit prohibition against the states regulating the overall length of tractor-trailer units terminates Pennsylvania's "conditional" use of 53-foot trailers. Therefore, Pennsylvania's prohibition of the operation of tractor-trailer units exceeding 60 feet in overall length on the Designated Network, being in direct contradiction of federal law, is invalid pursuant to the Supremacy Clause of the Constitution.

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6. On this point, we must dismiss Defendants' contention that the maximum trailer length in Pennsylvania was anything less than 60 feet as long as the overall length did not exceed 60 feet. This position is illogical. The implicit admission by both parties is that the minimum feasible length of a tractor that pulls a 53-foot trailer is 7 feet. Thus, for the purpose of this case, the maximum length of a trailer legally operating in Pennsylvania as of December 1, 1982, was 53 feet and not anything short of 60 feet.

[illegible]. PENNSYLVANIA'S 60-FOOT OVER-ALL LENGTH LIMITATION AS APPLIED TO ROADWAYS NOT PART OF THE DESIGNATED SYSTEM

Plaintiff's [sic] contend that subsection (b)'s grandfather clause as to trailer length and the prohibition against over-all length limitations apply to all Pennsylvania roadways and not just those highways that are part of the Designated Network. In support thereof, Plaintiffs note that only subsections (a) and (c) mention the Interstate and Federal-aid Primary System highways (Designated Network). *Id.*, at §2311(a), (c). While the first sentence of subsection (b) refers to subsection (a), Plaintiffs maintain that the remaining provisions in subsection (b) read as separate sentences that address state regulations on any highway. Plaintiffs further observe that the Secretary of Transportation was authorized to designate "qualifying Federal-aid Primary System highways subject to the provisions of *subsections (a) and (c)* of this section . . ." with subsection (b) not being included. 49 U.S.C. § 2311(e).

In addressing this issue, we recall the Ninth Circuit's comments in its attempt to interpret the meaning of a statute:

> While success for the novelist often lies in suggestive ambiguity allowing the readers to share in the process of creation, perfection for a statute's crafter lies in unquestionable clarity, forcing his audience to participate only in the process of implementation. When those charged with the responsibility of enforcing a statute find sufficient ambiguity by which to substitute creation for rote implementation, the judiciary must insure that the interpretation of the stat-

> ute conforms to the probable intent of statute's collective authors. Not gifted with literary omniscience, the judiciary must rely on the words of the statute, legislative history, subsequent case law, common sense and consideration of relevant policy implications in order to properly shape its critique.

Finnegan v. Matthews, 641 F.2d 1340, 1344 (9th Cir. 1981). Thus, in interpreting STAA, we must consider the plain language of the statute, STAA's legislative history, and the underlying policy implications.

Examining the statutory language first, we observe that subsections (a) and (c) explicitely refer to the operation of certain commercial vehicles on the Designated Network. Subsection (a) prohibits a state from regulating a length limitation of less than 48 feet for a trailer operating on any segment of the Designated Network. Subsection (c) forbids a state from prohibiting the operation of twin trailers on any segment of the Designated Network.

In contrast, subsection (b) does not condition its prohibition of certain state regulations concerning overall length limitations to vehicles operating on the Designated Network. While the first sentence in subsection (b) refers back to subsection (a), the sentence appears to be only a clarification of subsection (a). The two pertinent sentences of subsection (b) that follow are:

> No state shall establish, maintain, or enforce any regulation of commerce which imposes an overall length limitation on commercial motor vehicles operating in truck-tractor semitrailer or truck tractor semitrailer, trailer combinations. No state shall establish, maintain, or enforce any regulation of commerce which has the effect of prohibiting the use of trailers or semitrailers of such dimensions as those that were in actual and lawful use in such State on December 1, 1982.

49 U.S.C. § 2311(b). One district court has interpreted this language as prohibiting the states from imposing *any* overall length limitations on all highways within the states. *United States v. State of Florida,* 585 F.Supp. 807 at 810 (N.D.Fla. 1984).

Additionally, subsection (e) states, "The Secretary shall designate as qualifying Federal-aid Primary System highways *subject to the provisions of subsection (a) and (c)* of this section those Primary System highways that are capable of safely accommodating the vehicle lengths set forth therein." 49 U.S.C. § 2311(e) (1) (emphasis added). Subsection (b) is noticeably absent from this provision.

We conclude that the Statutory language of STAA is clear that only subsections (a) and (c) refer to the operation of motor vehicles on the Designated Network. The provisions of subsection (b) concerning the grandfather clause and the overall length limitations apply to tractor-trailer units operating on *any* state highways. We do not concur with Defendants' argument that the reference to subsection (a) in the *first* sentence of subsection (b) incorporates subsection (a)'s "Designated Network limitation" to all of the provisions in subsection (b). Defendants' analysis appears particularly unlikely in view of subsection (e)'s referral to only subsections (a) and (c).

Defendants have asserted that a finding that states cannot regulate the overall length of tractor-trailer units on state roads renders section 2312 superfluous. We disagree. Section 2312 provides that no state can deny "reasonable access to commercial motor vehicles subject to this chapter between (1) the [Designated Network] and (2)

terminals, facilities for food, fuel, repairs, and rest, and points of loading and unloading for household goods carriers." 49 U.S.C. § 2312. Subsection (c) of STAA, which concerns the operation of twin trailers on the Designated Network, is subject to section 2312's access provision. Moreover, in any state that previously did not permit the operation of 48-foot trailers or twin trailers, the guarantee of access to the Designated Network will apply to such vehicles operating under subsections (a) and (c). Thus, section 2312 of STAA is not superfluous in any sense.

Turning next to STAA's legislative history, we find little guidance. As Plaintiffs note, the legislative history of STAA is poor, the Conference Committee Report merely paraphrasing the statute. In the House Conference Report, No. 97-987, the House bill is observed to preclude the states from prohibiting trailers of such dimensions that were legally used as of the date of enactment of the Act. The Senate amendment "assures that State regulation may not apply to the length of truck tractors or the overall length of singles and doubles." H.R.Rep. No. 987, 97th Cong., 2d Sess. 4 (1982) *reprinted in* 1982 U.S. Code Cong & Ad.News 3639, 3692, 3714-15. Neither comments on the House bill or the Senate amendment mention that these prohibitions are limited to vehicles operating on the Designated Network.

In furtherance of their interpretation of STAA, Defendants have presented excerpts of Federal Highway Administration (FHWA) notices that indicate that the overall length limitation applies to vehicles operating on the Designated Network. *See* Defendants' Supplemental Sub-

mission, at 9a-18a; 48 Fed. Reg. 5210 (February 3, 1983); 48 Fed.Reg. 4844 (April 5, 1983); 49 Fed.Reg. 4203 (February 3, 1984). Only one FHWA notice cited by Defendants supports their position. This notice stated that 49 U.S.C. § 2311 prohibited all states from imposing overall length limits on the operation of tractor-trailer units on the Designated Network, 48 Fed.Reg. 5210-5211 (February 3, 1983). Nevertheless, this statement constitutes only the FHWA's interpretation of STAA and is not binding upon this court.[7] *See also* 48 Fed.Reg. 41,276, at 41, 279 (Sept. 14, 1983) ("*We interpret* Section 411(b) to be consistent with the rest of Section 411 and applicable only to the National [Designated] Network.")

While not ignoring the FHWA's interpretation, we find it difficult to fully determine the underlying policy implications of STAA. Without doubt, Congress intended to enhance interstate commerce by requiring all states to permit the operation of 48-foot trailers and twin trailers on any segment of the Designated Network. Aware that some states would be recalcitrant in permitting the operation of such vehicles, Congress authorized the Secretary of Transportation, and not the states, to determine the Designated Network segments. Additionally, all states

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7. Defendants also note that this court previously commented that subsection (b)'s overall length limitation affected vehicles operating on the Designated Network. *See Commonwealth v. Dole*, No. 83-0464 (M.D.Pa. 1983), memorandum of April 14, 1983, at 1-2. We find that our prior summary of STAA was erroneous in regard to subsection (b). In DOLE, the sole question facing us was the legality of the Secretary's classification of certain Pennsylvania roadways as part of the Designated Network, and not the scope of § 2311(b).

were required to permit reasonable access from the Designated Network to terminals and food and rest facilities. The policy implication underlying the overall length limitation is not so clear.

Plaintiffs assert that this overall length limitation reflects Congress' concern for safety by the use of short tractors. In support thereof, Plaintiffs cite the report of the Senate Committee on Commerce, Science, and Transportation concerning STAA, S.Rep. No. 97 298, 97th Cong., 1st Sess. 4(1981), which Plaintiffs recognize is only a report on a bill that was not actually passed. With this caveat in mind, Plaintiffs persuasively argue that tractor length and safety were important factors to supporters of a provision preventing overall tractor-trailer lengths.[8]

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8. A pertinent part of this Senate committee report is as follows:

> Specifically, the amendment permits continued State regulation of the size of the cargo units of commercial motor vehicles. No State may prohibit trailers of 48 feet or less. States would not be permitted to regulate the overall length of the vehicle. Nor would States be allowed to establish regulations any less restrictive than exist today.
>
> While the prohibition on regulation of the overall length of trucks may seem to be a major change, as a practical matter it will not result in significantly larger trucks than are on the road today and it will assure that safety will not be jeopardized by undue restrictions on the power unit. The great bulk of truck length is contained in the cargo carrying unit that is still under regulation by the States. *By focusing on trailer-size limitations only, there is no incentive to squeeze the truck cab down to an unsafe size in order to meet an overall length requirement.* Moreover, the driver can assure that there is sufficient separation be-

(Continued on following page)

Considering the statutory language, the poor legislative history, and the unclear policy underlying the overall length limitation, we conclude that STAA does prohibit the states from regulating the overall length of tractor-trailer units operating on any state roadway. We believe our interpretation of section 2311(b) is consistent with the other provisions in STAA. As of December 1, 1982, Pennsylvania permitted the operation of 53-foot trailers anywhere in Pennsylvania (with the possible exception of one or two particularly dangerous roads limited to small vehicles). With the enactment of STAA, Pennsylvania now cannot roll back this trailer length maximum nor regulate the maximum length of a truck tractor. STAA's prohibition of an overall length will not substantially increase the overall length of vehicles previously permitted on Pennsylvania's roads, thus permitting the use of longer but safer tractors.

In conclusion, Pennsylvania's statutory provisions regulating a 60-foot overall length, 75 Pa.C.S.A. § 4923(a) and (b)(6), as amended, conflict with the provision of

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(Continued from previous page)

> tween the tractor and the trailer to provide optimum control of the vehicle and minimum weight on the front steering axle. With an overall length limit, often trucks must either be configured in a way that is less safe or else give up valuable cargo space to allow for more safe driving conditions. In the future, truckers will not have to face that dilemma.
>
> S.Rep. No. 97-298, 97th Cong., 1st Sess. 4 (1981) (emphasis added).

STAA, 49 U.S.C. § 2311(b), and therefore are void under the Supremacy Clause.[9]

An appropriate order will be entered.

ORDER & JUDGMENT

AND NOW, this 12th day of April, 1984, IT IS HEREBY ORDERED that Plaintiffs' motion for summary judgment on the First Claim of the Second Amended Complaint is granted and Defendant's motion for partial summary judgment is denied. Judgment be and hereby is entered in favor of Plaintiffs National Freight, Inc.; Dart Transit Company; Owens—Illinois, Inc.; and Continental Can Company, Inc. and against Defendants Thomas D. Larson, Col. Daniel F. Dunn, LeRoy S. Zimmerman, and the Hon. Richard Thornburgh.

IT IS FURTHER ORDERED, in accordance with the accompanying April 12, 1984, memorandum, that sections 4923(a) and 4923(b)(6) of Pennsylvania's Vehicle Code, 75 Pa.C.S.A. § 4923(a), (b)(6) (Supp.1983-1984), *as amended*, 1983 Pa.Legis.Serv. 83, 89-90 (Purdons) (Act. No. 1983-19), being partially in conflict with the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. § 2311(b), are null and void pursuant to the Supremacy Clause, Const., Art. VI, cl. 2, only to the extent that the Pennsylvania statutory provisions regulate the overall

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9. In their brief, Defendants preserved the question of whether STAA violated the Tenth Amendment since the issue was pending before the Supreme Court. On February 21, 1984, the Supreme Court affirmed the decision finding no Tenth Amendment violation by the enactment of STAA. *Connecticut v. United States*, — U.S. —, 104 S.Ct. 1263, 79 L.Ed.2d 670 (1984) *aff'g*, 566 F.Supp. 571, 577-78 (D. Conn.1983), *aff'd*, No. 83-6159 (2d Cir. Sept. 1, 1983).

length of a truck tractor and single trailer combination driven on any Pennsylvania roadway and to the extent that the provisions limit the length of a single trailer to 48 feet rather than a maximum of 53 feet. Thus, a trailer driven in a combination of a truck tractor and single trailer on any Pennsylvania roadway cannot exceed 53 feet and Pennsylvania cannot regulate the overall length of a truck tractor or a truck tractor-single trailer combination.

IT IS FURTHER ORDERED that the parties bear their own costs.

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. CV-83-1733

Judge Herman

NATIONAL FREIGHT, INC., a New Jersey corporation, DART TRANSIT COMPANY a Minnesota corporation, OWENS-ILLINOIS INC., an Ohio corporation, and CONTINENTAL CAN COMPANY, INC., a Delaware corporation,

Plaintiffs,

vs.

THOMAS D. LARSON, Secretary of Transportation, COL. DANIEL F. DUNN, Commissioner of State Police, LeROY S. ZIMMERMAN, Attorney General, and HON. RICHARD THORNBURGH, Governor,

Defendants.

STIPULATION

(Filed January 23, 1984)

Plaintiffs and Defendants, for the purposes of this litigation, stipulate that the following facts are true and correct, reserving the right to object on grounds of relevance.

1. Plaintiff National Freight, Inc. ("National"), is an irregular route carrier operating in 48 states. National is incorporated in New Jersey and has its principal offices in Vineland, New Jersey.

2. National has thirty-three terminals including four in Pennsylvania (Clarion, New Stanton, Mechanicsburg and Meshoppen). It operates several hundred vans each day in Pennsylvania.

3. Dart Transit Company ("Dart") is an irregular route common carrier operating in 48 states. Dart is incorporated in Minnesota with its principal offices in St. Paul, Minnesota.

4. Dart regularly operates well over a million vehicle miles a year in Pennsylvania to serve its customers in Pennsylvania and other states.

5. Owens-Illinois Inc. ("Owens-Illinois") is a diverse manufacturing corporation with extensive business in packaging and containers. Owens-Illinois is incorporated in Ohio, with its principal offices in Toledo, Ohio.

6. Owens-Illinois has seven manufacturing facilities in Pennsylvania (Bradford, Bristol, Brookville, Clarion, Mt. Pleasant, and two in Pittston) engaged in the manufacture and shipping of products such as corrugated boxes, glass containers and bottles, pharmaceutical vials, glassware, and television display bulb parts.

7. Continental Can Company, Inc. ("Continental Can"), is a diverse manufacturing corporation with extensive business in containers. Continental Can is incorporated in Delaware, with its principal offices in Stamford, Connecticut.

8. Continental Can has four manufacturing facilities in Pennsylvania (Oil City, Temple, Lancaster, and Milton) engaged in the manufacture of cans for products such as oil, food, and beverages. These cans are shipped to customers in Pennsylvania and other states.

9. National and Dart, along with other carriers, transport products for Continental Can and Owens-Illinois, including products from their Pennsylvania plants.

10. National has a fleet of approximately 775 tractors. Approximately 400 of these tractors are short tractors which can haul 53-foot trailers within a 60-foot overall length limit. Since passage of the STAA, National has purchased approximately 110 tractors which cannot haul 53-foot trailers within a 60-foot overall limit. National has 184 53-foot trailers.

11. Dart has approximately 560 tractors which it leases or owns and a fleet of approximately 1,200 trailers of which 171 are 53-foot in length. Dart has owned or leased short tractors in the past, but subsequent to the passage of STAA, began to replace them. None of its tractors are now able to haul 53-foot trailers within a 60-foot limit.

12. National and Dart provide shipper-to-consignee service. Though long hauls are generally operated on Interstate Highways, their vehicles do operate off the Interstate System and the Designated Highway System (system of primary highways designated by the U.S. Department of Transportation under 49 U.S.C. §2311). They desire to operate 53-foot trailers both on and off the Interstate and Designated Highway System without restrictions other than those generally applied to commercial vehicles.

HISTORICAL USE.

13. Prior to December 2, 1982, National has legally operated 53-foot trailers, 96 inches wide in Pennsylvania within a 60-foot overall length limit. Such operations have had no restrictions as to highway type other than those generally applied to commercial vehicles.

DESCRIPTION OF THE VEHICLES.

14. Though there may be some variation depending on manufacturer, National's 53-foot Vanco trailers are a common type of 53-foot trailers.

15. Ex. 1 provides a diagram of National's 53-foot trailers in combination with a tractor presently legal in Pennsylvania. The trailer is 96 inches wide, 53 feet long, and 13 feet 6 inches high. It has a cubic volume of 3740 cubic feet. The weight is approximately 14,500 pounds. The short tractor used by National in Pennsylvania to accommodate an overall 60-foot length limit is a two-axle or three-axle tractor with a 118-inch or 128-inch wheelbase respectively, weighing approximately 11,800 pounds and 15,000 pounds respectively.

16. Vehicles which are designed to operate at or near gross weight limits commonly have large kingpin to rear axle measurements in order to facilitate meeting the bridge formula (a formula for axle weight limits and axle spacing designed to reduce bridge deterioration).

17. Forty-eight-foot trailers with greater kingpin to rear axle measurements than those of National's fifty-three-foot trailers are legally operated in Pennsylvania.

18. Such 48-foot trailers have greater offtracking and a larger turning radius than National's 53-foot trailers when each trailer is in combination with similar tractors.

19. Pennsylvania does not regulate kingpin to rear axle measurements (other than indirectly through the bridge formula) and presently has no law which would require operators of 53-foot trailers to maintain any given

axle opening. Fifty-three-foot trailers could legally be built and operated with longer kingpin to rear axle measurements than those described.

20. "Offtracking" is a standard measure of a vehicle's maneuverability at low speeds and is the distance between the path of the steering wheels and the other wheels of the vehicle in a turning maneuver.

PRODUCTIVITY

21. The Plaintiffs in this action either transport, or manufacture and hire transportation for, light low-density freight.

22. With low-density freight, the limit on the carrying capacity of a truck is its volume and not its weight.

23. As an example, National transported 35 loads in 53-foot trailers for a single customer from Philadelphia to Illinois in 1982. The average weight of these loads was 19,663 pounds, whereas the gross weight limit would allow ladings of approximately 50,000 pounds.

24. A typical 48-foot trailer load of aluminum beverage cans manufactured by Continental Can weigh 9,000 pounds; a typical load of steel food cans, 15,000 pounds, and a typical load of corrugated fibreboard, 16,000 pounds.

25. Many of Continental Can's products manufactured in Pennsylvania are loaded on pallets, most commonly 44″ x 56″. Corrugated fibreboard products are commonly bundled with the bundle size varying according to the product.

26. Many of Owens-Illinois' products manufactured in Pennsylvania are also palletized, most commonly to 40″

x 48″. Corrugated fibreboard products are commonly bundled.

27. A 53-foot van typically has a volume 10% greater than that of a 48-foot trailer.

28. A 48-foot van, 96 inches wide, has a maximum capacity of 22 40″ x 48″ pallets whereas a 53-foot van, 96 inches wide, can be loaded with 26 pallets, an 18% increase.

29. A 48-foot van, 96 inches wide, has a maximum capacity of 20 44″ x 56″ pallets whereas a 53-foot trailer, 96 inches wide, can be loaded with 22, a 10% increase.

30. There are no substantial differences in the direct operating cost of a 53-foot van compared to a 48-foot van.

PENNSYLVANIA'S STATUTES.

31. Prior to July 7, 1983, Pennsylvania state law placed no relevant restrictions on trailer length, but did impose an overall length of 60 feet on semi-trailer combinations.

32. Pennsylvania's new law prohibits the use of 53-foot trailers on any highway unless the combination has an overall length of 60 feet or less. The law prohibits the use of trailers over 48 feet in length on the Interstates and Designated Highway System unless overall combination length is 60 feet or less, and establishes a general 60-foot overall length limitation on all other highways.

RESULTS OF PENNSYLVANIA'S LAW.

33. Plaintiffs could operate 53-foot trailers in Pennsylvania, if such operations were with short tractors so

that the overall length of the combination were under 60 feet.

34. A tractor represents an investment approximately three to five times that of a trailer.

35. Carrier fleets generally have more trailers than tractors.

36. National Freight and Dart, absent Pennsylvania's restrictions, would operate 53-foot trailers in combinations longer than 60 feet using tractors which they presently own or lease.

37. National Freight has operated combinations in Pennsylvania at lengths over 60 feet and has received citations for so doing.

38. Neither National nor Dart can legally operate in Pennsylvania within a 60-foot overall limit with 53-foot trailers unless they operate a separate fleet of short tractors able to haul 53-foot trailers in Pennsylvania or operate nationally only with short tractors. Such short tractors, however, would be physically incompatible with trailing equipment legal in other states.

39. Dart can no longer operate 53-foot trailers in Pennsylvania within a 60-foot overall limit without purchasing or leasing short tractors to operate in the state (see para. 11).

40. There are costs associated with operating a separate fleet. These costs include (1) increased dispatch costs and (2) increased empty and bobtail movements to return and position short tractors in Pennsylvania.

41. Continental Can has attempted to obtain 53-foot trailer service in Pennsylvania from carriers who could and would provide that service absent the necessity of using short tractors. It has obtained some limited service from National Freight and others using short tractors, but has been unable to obtain most of the 53-foot trailer service desired for its Pennsylvania plants.

42. Owens-Illinois has similarly been able to obtain only limited 53-foot trailer service in Pennsylvania.

Stipulated and agreed to:

Date: 1/20/84

/s/ Robert B. Hoffman
Deputy Attorney General
Commonwealth of Pennsylvania
1641 Strawberry Square
(15th Floor)
Harrisburg, PA 17120

Date: 1/20/84

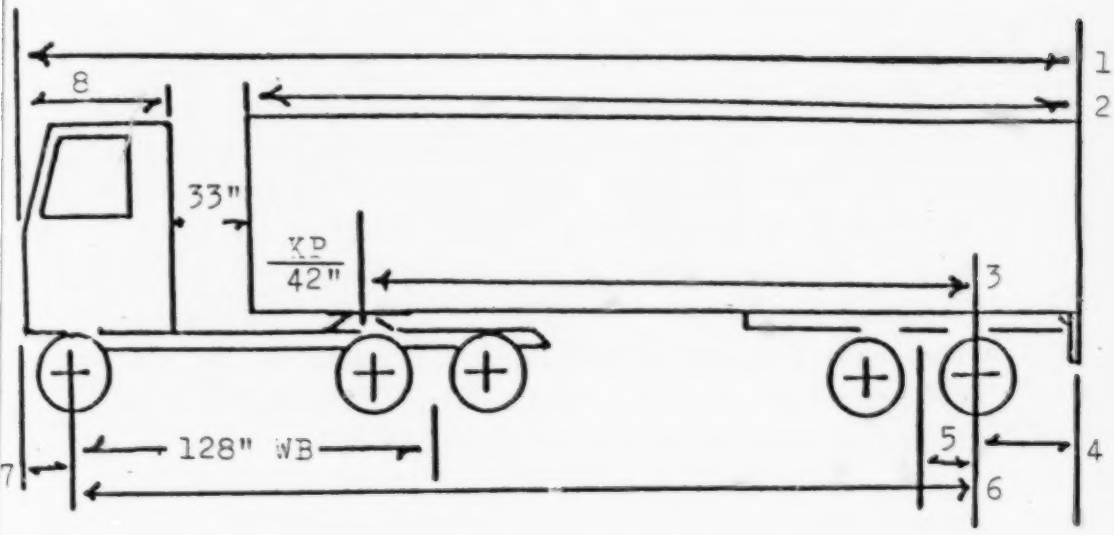
/s/ Jack M. Stover
Shearer, Mette & Woodside
1801 North Front Street
P. O. Box 729
Harrisburg, PA 17108

Date: 1/18/84

/s/ John H. Lederer
DeWitt, Sundby, Huggett,
Schumacher & Morgan, S.C.
121 South Pinckney Street
P. O. Box 2059
Madison, WI 53701

App. 45

EXHIBIT 1



1. Overall length 60′ 720 inches.
2. Trailer length 53′ 636 inches.
3. Kingpin to center line of rear most axle—adjustable —35′6″ to 43′6″ (33′6″ - 41′6″ Kingpin to tandem center).
4. Center line of rear axle to rear of trailer in the farthest rear slider setting—76″.
5. Tandem Setting to center line of rear axle 24″.
6. Distance between axle 1 and axle 5—in rear most position—51′. *Bridge Formula.*
7. Front tire set back 27″.
8. BBC—50½″.

National Freight

§ 2311. Length limitations on federally assisted highways

(a) Prohibition against certain length limitations on semitrailers and trailers.

Except as provided in subsection (i) of this section, no State shall establish, maintain, or enforce any regulation of commerce which imposes a vehicle length limitation of less than forty-eight feet on the length of the semitrailer unit operating in a truck tractor-semitrailer combination, and of less than twenty-eight feet on the length of any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination, on any segment of the National System of Interstate and Defense Highways (other than a segment exempted under subsection (i) of this section) and those classes of qualifying Federal-aid Primary System highways as designated by the Secretary of Transporation (hereinafter in this part referred to as the "Secretary"), pursuant to subsection (e) of this section.

(b) Nonapplicability of limitations to truck tractors, prohibition against overall length limitations on truck-tractor semitrailer or truck-tractor semitrailer, trailer combinations; prohibition against regulation of commerce prohibiting use of certain trailers and semitrailers

Length limitations established, maintained, or enforced by the States under subsection (a) of this section shall apply solely to the semitrailer or trailer or trailers and not to a truck tractor. No State shall establish, maintain, or enforce any regulation of commerce which imposes an overall length limitation on commercial motor vehicles operating in truck-tractor semitrailer or truck tractor semitrailer, trailer combinations. No State shall establish, maintain, or enforce any regulation of commerce which has the effect of prohibiting the use of trailers or

semitrailers of such dimensions as those that were in actual and lawful use in such State on December 1, 1982. No State shall establish, maintain, or enforce any regulation of commerce which has the effect of prohibiting the use of existing trailers or semitrailers, of up to twenty-eight and one-half feet in length, in a truck tractor-semitrailer-trailer combination if those trailers or semi-trailers were actually and lawfully operating on December 1, 1982, within a sixty-five-foot overall length limit in any State.

(c) Prohibition by State of combination of truck tractor and two trailing units forbidden

No State shall prohibit commercial motor vehicle combinations consisting of a truck tractor and two trailing units on any segment of the National System of Interstate and Defense Highways (other than a segment exempted under subsection (i) of this section), and those classes of qualifying Federal-aid Primary System highways as designated by the Secretary pursuant to subsection (e) of this section.

(d) Establishment of rules and making of determinations by Secretary

The Secretary is authorized to establish rules to implement the provisions of this section, and to make such determinations as are necessary to accommodate specialized equipment (including, but not limited to, automobile transporters) subject to subsections (a) and (b) of this section.

(e) Designation of qualifying Federal-aid Primary System highways; time; enactment of final rules

(1) The Secretary shall designate as qualifying Federal-aid Primary System highways subject to the provisions of subsections (a) and (c) of this section those

Primary System highways that are capable of safely accommodating the vehicle lengths set forth therein.

(2) The Secretary shall make an initial determination of which classes of highways shall be designated pursuant to paragraph (1) within 90 days of January 6, 1983.

(3) The Secretary shall enact final rules pursuant to paragraph (1) no later than two hundred and seventy days from January 6, 1983, and may revise such rules from time to time thereafter.

(f) Truck tractor defined

For the purpose of this section, "truck tractor" shall be defined as the noncargo carrying power unit that operates in combination with a semitrailer or trailer, except that a truck tractor and semitrailer engaged in the transporation of automobiles may transport motor vehicles on part of the power unit.

(g) Effective date

The provisions of this section shall take effect ninety days after January 6, 1983.

* * *

§ 2312. Access to the Interstate System

(a) No State may enact or enforce any law denying reasonable access to commercial motor vehicles subject to this chapter between (1) the Interestate and Defense Highway System (other than any segment thereof which is exempted under section 2311 (i) or 2316(e) of this title) and any other qualifying Federal-aid Primary System highways, as designated by the Secretary, and (2) terminals, facilities for food, fuel, repairs, and rest, and points of loading and unloading for household goods carrier and for any truck tractor-semitrailer combination, in which

the semitrailer has a length not to exceed 28½ feet and which generally operates as part of a vehicle combination described in section 2311(c) of this title.

(b) Nothing in this section shall be construed as preventing any State or local government from imposing any reasonable restriction, based on safey considerations, on any truck tractor-semitrailer combination in which the semitrailer has a length not to exceed 28½ feet and which generally operates as part of a vehicle combination described in section 2311(c) of this title.

SENATE

CALENDAR NO. 414

97TH CONGRESS) (REPORT
1st Session) (No. 97-298

UNIFORM MOTOR VEHICLE STANDARDS ACT OF 1981

DECEMBER 14 (legislative day, NOVEMBER 30), 1981—
Ordered to be printed

MR. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1402]

* * *

SUMMARY OF THE BILL

TRUCK LENGTHS

As originally drafted, the bill provided that States could not prohibit single tractor-trailer units of less than 60 feet and double-trailer units of less than 65 feet. Fur-

ther, it provided that in the single tractor-trailer combination, the trailer unit could be no more than 45 feet.

The provision restricting trailer size was highly criticized by many of the witnesses in the hearing. Most argued that the gains in productivity resulting from the increased overall length would be lost by restricting the cargo unit to 45 feet. The drivers argued that if limitations were placed on the cargo units in single combinations, they would also be placed on doubles as well. Hence the parties were generally dissatisfied with the provision —however for different reasons.

In order to meet the legitimate concerns of all interested parties, the Committee adopted amendments to the bill that provide for greater cargo capacity without jeopardizing the safety of the vehicle. Specifically, the amendment permits continued State regulation of the size of the cargo units of commercial motor vehicles. No State may prohibit trailers of 48 feet or less. States would not be permitted to regulate the overall length of the vehicle. Nor would States be allowed to establish regulations any less restrictive than exist today.

While the prohibition on regulation of the overall length of trucks may seem to be a major change, as a practical matter it will not result in significantly larger trucks than are on the road today and it will assure that safety will not be jeopardized by undue restrictions on the power unit. The great bulk of truck length is contained in the cargo carrying unit that is still under regulation by the States. By focusing on trailer-size limitations only, there is no incentive to squeeze the truck cab down to an unsafe size in order to meet an overall length requirement. Moreover, the driver can assure that there is sufficient

separation between the tractor and the trailer to provide optimum control of the vehicle and minimum weight on the front steering axle. With an overall length limit, often trucks must either be configured in a way that is less safe or else give up valuable cargo space to allow for more safe driving conditions. In the future, truckers will not have to face that dilemma.

The Committee also adopted an amendment to section 3 that would prohibit the various States from rolling back the clock on recent gains in motor vehicle productivity. While the Committee expects that no State would seek to impose regulations more restrictive than currently exist, there is a possibility of such action in the future. Any such decision would jeopardize the increases in productivity and fuel savings gained by the legislation. Hence the bill provides that States may not prohibit the use of trailers or semi-trailers of such dimensions as were in actual and lawful use in those States on December 1, 1981.

Most state laws setting truck length limitations also provide for larger trucks and trailers under special circumstances on an annual permit basis. This provision in the bill simply requires States to continue to allow such vehicles under at least the same ground rules as were in effect on December 1, 1981. It does not force States that have only allowed larger trailers by permit in the past to allow them on an across-the-board basis in the future without special permit. Rather, it is simply an assurance that at least the status quo will be maintained in each State.

In this regard we would expect that States which have enacted reforms of length laws by December 1, 1981, but which do not go into effect until 1982, will not impose reg-

ulations that would have the effect of being more restrictive than such newly reformed laws.

The record before the Committee indicates no substantiated safety dangers of the proposals for uniform length minimums or for mandating double trailer units. The record is abundantly clear that longer trucks are not per se less safe. Indeed, by eliminating limitations on cablengths safety is positively improved.

In the 1978 Commerce Committee hearings, the Department of Transportation (DOT) made several observations about the safety benefits of increased cab dimensions. These observations are well worth repeating, because they form the basis of the rationale behind Committee's decision:

1. IMPROVED BRAKING, HANDLING, AND STABILITY

These benefits should occur since longer wheelbase tractors experience less weight transfer to the steering axle in braking maneuvers. Also, smaller steering forces would be required for a given turning maneuver by the driver of a longer wheelbase tractor.

2. IMPROVED DRIVER COMFORT AND SAFETY

An increase in the length of the driver compartment—in either cab-over-engine [COE] or the conventional cab-behind-engine [CBE] vehicles—would permit greater priority to be given to driver comfort and optimum placement of controls and instruments, both of which are important to the safe operation of the vehicle. Also, occupant crash protection could be improved.

3. IMPROVED RIDE QUALITY

Short wheelbases and high fifth-wheel-offsets—that is, the distance the hinge point of the trailer is forward of the tractor drive axle—often affect ride

quality adversely, which tends to induce driver fatigue and occupational health problems associated with high levels of vibration. A longer wheelbase would give the designer greater latitude in selecting the specifications of a vehicle for a particular operation, and thereby offer the possibility of improving ride quality.

4. IMPROVED INGRESS TO AND EGRESS FROM THE CAB

Present overall length constraints, which affect the cab of the vehicle, frequently result in cab entrance an degress designs which are more awkward and less safe than if more space were available. On cab-behind-engine tractors, today's overall length limits can result in up to 4 feet of steps and footholes located to the rear of the door rather than directly in line with it. Greater freedom to revise the exterior shape of tractors could reduce the height of steps and the hazard of climbing them. Such considerations are important since slips and falls while entering or leaving the cab are a major source of injury to truck-drivers.

5. A WIDER BERTH IN CABS THAT HAVE SLEEPING COMPARTMENTS

Minimum sleeping accommodations as presently specified for commercal motor vehicles are claimed to be too narrow to permit adequate rest. With more comfortable sleeping conditions, a person could be expected to obtain more rest and be in better condition to operate the vehicle safely.

6. IMPROVED AERODYNAMICS, REDUCING WIND RESISTANCE WITH IMPROVEMENTS IN FUEL ECONOMY

Given more opportunity to revise the shape of exterior cab surfaces, aerodynamic design could be introduced by manufacturers to reduce wind resistance, and thus provide improved fule economy without encroaching upon the already limited space available to the driver in the cab. This applies to both conven-

tional cab-behind-engine and cab-over engine configurations.

7. IMPROVED FUEL TANK LOCATION

On some of the short wheelbase cab-over-engine tractors, clearance between the fuel tanks and the tractor tires leaves little margin against damage to the tank envelope by the front wheels in case of an accident. While there is yet no direct accident correlation with fuel tank location, the incidence of fire in truck accidents has increased in recent years. The possibility of a longer wheelbase offers the potential for better location of the fuel tank.

* * *

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75 Pa.Stat.Ann. § 4923 (Supp. 1984-1985)

[a] General rule—Except as provided in subsection (b), no motor vehicle, including any load and bumpers, shall exceed an overall length of 40 feet, and no combination, including any load and bumpers, shall exceed an overall length of 60 feet.

[b] Exceptions.—The limitations of (a) do not apply to the following:

* * *

[5] A combination designed and used exclusively for carrying motor vehicles if the overall length of the combination and load does not exceed 65 feet.

[6] Any combination consisting of a truck tractor and one or two trailers, when driven as described in section 4908 (relating to operation of certain combinations on interstate and certain primary highways), provided that, except when being operated as a part of a combination of a tractor and single trailer not exceeding an overall length of 60 feet, the length of a single trailer shall not exceed 48 feet and the length of each double trailer shall not exceed 28 feet.

RULE 28.1 LISTING

National Freight, Inc.

No parents, affiliates, or subsidiaries not wholly owned.

Dart Transit Company

No parents, affiliates, or subsidiaries not wholly owned.

Continental Can Company, Inc.

No parents, affiliates, or subsidiaries not wholly owned.

Owens-Illinois, Inc.

Partially owned subsidiaries:

Andover Controls Corporation

Companhia Industrial Sao Paula e Rio (Brazil)

Vina Santa Rita, Ltda. (Chile)

Cristaleria del Ecuador, S.A. (Ecuador)

Middle East Glass Manufacturing Company (Egypt)

Hellenic-Ownes Elefsia Glass Company (Greece)

P.T. Kangar Consolidated Industries (Indonesia)

Union Glass and Container Corporation (Philippines)

Owens-Illinois de Puerto Rico (Puerto Rico)

Consol Limited (South Africa)

United Glass Holdings plc (United Kingdom)

Fabrica de Vidrio Los Andes, C.A. (Venezuela)

Manufacturera de Vidrios Planos, C.A. (Venezuela)

Gerresheim Group (West Germany)

Cristal-Owens Plasticos Ltda. (Chile)

Hygienic-Lily Limited (Australia)

Sun-Lily Company, Ltd. (Japan)

Emballages Laurent, S.A. (France)

Papeteries d'Espaly S.A.R.L. (France)

Papeteries Etienne, S.A. (France)

Kraft, S.A. (Mexico)

Cajas Corrugadas de Mexico, S.A. (Mexico)

Cajas y Empaques de Occidente, S.A. (Mexico)

Health Group Inc.

Prudent Supply, Inc.

O-I Schott Process Systems, Inc.

P.T. Igar Jaya (Indonesia)

Envases de Borosilicato, S.A. (Mexico)

Durobor, S.A. (Belgium)

Libbey St. Clair Inc. (Canada)

Sasaki-Owens Glass Co., Ltd. (Japan)

Nippon Electric Glass Company, Ltd. (Japan)

Hankuk Electric Glass Co., Ltd. (Korea)

Supreme Court, U.S.
FILED
SEP 20 1985
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-115

In The
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

NATIONAL FREIGHT, INC., a New Jersey corporation; DART TRANSIT COMPANY, a Minnesota corporation; OWENS-ILLINOIS, an Ohio corporation; and CONTINENTAL CAN COMPANY, INC., a Delaware corporation,
Petitioners,

vs.

THOMAS D. LARSON, Secretary of Transportation; COL. DANIEL F. DUNN, Commissioner of State Police; LeROY S. ZIMMERMAN, Attorney General; and HON. RICHARD THORNBURGH, Governor,
Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BEST AVAILABLE COPY

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Court of Appeals properly concluded that the federal Surface Transportation Assistance Act of 1982, 49 U.S.C. § 2301 et. seq., did not preempt states from regulating the overall length of tractor-trailer combination vehicles when travelling on roads which are not a part of the federal Designated Network? [1]

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[1] The Designated Network refers to the system of primary highways designated by the United States Department of Transportation under 49 U.S.C. § 2311, including reasonable access to other roads for specified purposes such as food, fuel, rest, repair and terminals. See 49 U.S.C. § 2312.

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Contents	ii
Table of Authorities	iii
Parties	1
Opinions Below	2
Jurisdiction	4
Statutory Provisions Involved	4
Statement	5
Argument	13
Conclusion	31
Addendum	

TABLE OF AUTHORITIES

Cases	Page
Chevron U.S.A. v. National Resources Defense Council, No. 82-1005, filed June 25, 1984	16
Federal Open Market Comm., etc. v. Merrill, 443 U.S. 340 (1979)	21
Kassell v. Consolidated Freightways Corp., 450 U.S. 662 (1980)	23
Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982)	28
United States v. Sheffield Board of Commissioners, 435 U.S. 110 (1977)	19
STATUTES:	
28 U.S.C. § 1254(1)	3
49 U.S.C. § 2301-2315	6
49 U.S.C. § 2311(a)	7
49 U.S.C. § 2311(b)	7
49 U.S.C. § 2311(c)	6
49 U.S.C. § 2312	25,2
75 Pa.Cons.Stat.Ann. § 4923(a)	5
75 Pa.Cons.Stat.Ann. § 4904(e)	8
Surface Transportation Assistance Act of 1982	pass
Tandem Truck Safety Act, P.L. 98-554 Title I, 98 Stat. 2829	11,1 24

TABLE OF AUTHORITIES--Continued

	Page
Other Materials:	
23 C.F.R. § 658.1-658.21.....	15
49 Fed.Reg. 23302 (June 5, 1984).....	10
49 Fed.Reg. 23317 (June 5, 1984).....	11,15
Senate Report No. 505, 98th Cong. 2d Sess. (1984).....	19
1982 U.S. Code Cong. & Ad.News p. 3629.....	24-25
1984 U.S. Code Cong. & Ad.News p. 4769.....	24-25
H.Rep. No. 555,97th Cong. 2d. Sess. 23 (1982).....	23
H.Rep. No. 926,98th Cong. 2d. Sess. (1984).....	19

PARTIES

All parties appear on the caption of the petition for writ of certiorari.

NO. 85-115

In The
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

NATIONAL FREIGHT, INC., a New Jersey corporation; DART TRANSIT COMPANY, a Minnesota corporation; OWENS-ILLINOIS, an Ohio corporation; and CONTINENTAL CAN COMPANY, INC., a Delaware corporation,
Petitioners,

vs.

THOMAS D. LARSON, Secretary of Transportation; COL. DANIEL F. DUNN, Commissioner of State Police; LeROY S. ZIMMERMAN, Attorney General; and HON. RICHARD THORNBURGH, Governor,
Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 1-19) is published at 760 F.2d 499. The opinion of the District Court (Pet. App. 20-36) is published at 583 F.Supp. 1461.

JURISDICTION

The judgment of the Court of Appeals was entered on April 23, 1985, and the petition was filed within 90 days. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are Sections 411-412 of the Surface Transportation Assistance Act of 1982, as amended by the Tandem Truck Safety Act of 1984, Title 49, §§ 2311-2312, as amended, and Pennsylvania Consolidated Statutes Annotated, Title 75, §§ 102, 4904, 4908, 4921 and 4923. Both the federal and state statutory provisions appear as an addendum to this brief in opposition at pages Add. 7-19.

STATEMENT

Prior to December of 1982, the federal government had no standards on vehicle lengths. However, Pennsylvania, like most other states, imposed an overall length limit of sixty feet on tractor-semi-trailer combinations. 75 Pa. Cons. Stat. Ann. § 4923(a) (Purdons Supp. 1983-84).[2] Although Pennsylvania attempted to regulate trailer and tractor length through its overall length provision, trucking companies, such as petitioners here, were able to increase their loading capacities and still meet the overall length limit by reducing the length of their tractors and correspondingly increasing the length of their trailers. Thus,

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[2]Pennsylvania did not allow twin-trailers on its highways in 1982.

petitioners operated fifty-three foot trailers in Pennsylvania in combination with a short tractor that added only seven feet to the overall length. Pet. App. 3.

In late 1982, Congress ventured into the area of highway regulation by enacting the Surface Transportation Assistance Act of 1982 (STAA). 49 U.S.C. §§ 2301-2315. That law addressed and, to some extent, preempted state size, weight and vehicle configuration limits for large commercial motor vehicles. It directed that no state may prohibit the operation of a tractor and two trailing units (twin-trailers) on the Designated Network. 49 U.S.C. § 2311(c). It also directed that no state shall impose a vehicle length

limitation of less than forty-eight (48) feet for a semi-trailer unit operating in a truck tractor-semi-trailer combination or twenty-eight (28) feet on the length of a twin-trailer unit combination "on any segment of the Designated Network". 49 U.S.C. § 2311(a). Subsection (b) of Section 411, 49 U.S.C. § 2311(b), further provided that any length limitations established by the states under subsection (a) were to apply "solely to the semi-trailer or trailers and not to the truck tractor". Finally, Subsection (b) provided that no state shall establish any regulation "which has the effect of prohibiting the use of trailers or semi-trailers of such dimensions as those that were in actual and lawful use in such state on December 1, 1982."

As a result of the STAA, Pennsylvania was required to amend its state legislation and it did so. See 1983 Pa.Legis.Serv. 93 (Purdons)(Act No. 1983-19) at Add. 14. First, Pennsylvania's prohibition against the operation of twin-trailers on the Designated Network was eliminated. See Act 19, § 3, amending 75 Pa. Cons. Stat. Ann. § 4904(e), Add. 14. Second, the pre-existing sixty foot length limitation was abolished for both semi and twin combination vehicles when operating on the Designated Network (so long as the length of the semi-trailer did not exceed forty-eight (48) feet and the length of each twin-trailer did not exceed twenty-eight (28) feet.) See Id; Section 4923(b), Add. 19. In other words, so long as the semi-trailer unit

did not exceed forty-eight (48) feet in length, there was no limit on its overall length when operating on the Designated Network. However, on roads which are not part of the Designated Network, Pennsylvania's sixty (60) foot overall length limitation remained.[3]

Thus, the two issues before the District Court were whether petitioners could operate their fifty-three (53) foot trailers without regard to overall length on (1) the Designated Network and

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[3]It should be noted that Pennsylvania law did not prohibit petitioners from operating their 53 foot trailers either (1) on the Designated Network or (2) off the Designated Network. However, because petitioners' trailers are in excess of forty-eight (48) feet (the length limitation established in Subsection (a) of § 411) the overall length of the vehicle could not exceed sixty (60) feet.

(2) all roads in Pennsylvania. And, because the District Court concluded that they could be operated on all Pennsylvania roads, it concluded, a fortiori, that their operation was authorized on the Designated Network. Pet. App. 28-35.

Following the District Court's decision, but prior to the decision of the Court of Appeals, two significant events occurred. First, the Federal Highway Administration (FHWA), the agency charged with administration of the STAA, published a "final rule" on June 5, 1984 at 49 Fed.Reg. 23302-23329. In that final rule, FHWA issued an interpretation concluding that the STAA's length provisions applied only when the combination vehicles were in use on the national Network or in transit between the Network and terminals

or other service locations; the precise position taken by Pennsylvania in its 1983 legislation. 49 Fed.Reg. at 23317.

Then, on October 30, 1984, Congress passed the Tandem Truck Safety Act, P.L. 98-554, Title I, 98 Stat. 2829, which amended both Sections 411 and 412 of the STAA. The 1984 amendments, inter alia, (1) authorized the governors of the various states to exempt certain interstate highways from the Designated Network, 49 U.S.C. § 2311(i), (2) provided that, on the Designated Network, no state shall prohibit vehicle widths of less than 102 inches, and (3) provided that the STAA should not be construed as preventing states from imposing reasonable safety restrictions on the operation of 102 inch wide combination vehicles which exceed 28-1/2 feet in length. Add. 7-13.

On April 23, 1985, the Court of Appeals issued its opinion and order which affirmed the District Court with regard to the Designated Network question.[4] However, it reversed the District Court with regard to other roads concluding that the STAA did not (and was not intended to) preclude states from regulating the overall length of combination vehicles when operating on roads which were not a part of the Designated Network; this being the same interpretation as that of FHWA.

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[4]Respondents have not filed a cross-appeal from this portion of the Court of Appeals' decision.

ARGUMENT

The decision of the Court of Appeals is not in conflict with the decision of any other court of appeals or any state court of last resort. Nevertheless, petitioners ask this Court to review this case because (1) it will eliminate confusion among the states, (2) it will determine what equipment the trucking industry should buy, and (3) it should determine congressional policy. See petition at 7. However, none of the reasons set forth above is persuasive. First, the Federal Highway Administration has already eliminated any confusion among the states by issuing its final rule on June 5, 1984 which interprets the STAA precisely as did the Court of Appeals. Second, the only confusion regarding the purchase of equipment stems from petitioners' refusal

to accept the language of the STAA, FHWA's interpretation of the STAA and the Court of Appeal's ascertainment of congressional intent. Finally, although the record does not show that the issue before this Court is of sufficient importance to warrant review, assuming arguendo that it is, the Court of Appeals did properly determine Congress' intent and that determination was logical.

1. Petitioners' contention that this court should review the case to determine what conforming laws the 50 states must enact is without merit. As noted earlier, although no other court of appeals has ruled on the issue presently before this Court, FHWA has published a "final rule" which provides clear guidance to all states:

> Section 658.13 Length.
> (a) The length provisions of the STAA apply only to the following types of vehicle combinations: (1) Truck-tractor-semi-trailer (2) Truck tractor-semi-trailer-trailer.
>
> The length provisions apply only when these combinations are in use on the National Network or in transit between these highways and terminals or service locations pursuant to § 658.19.

49 Fed.Reg. at 23317[5]. That "final rule" goes on to reason: "Congress established truck lengths (sic) limits in the STAA in order to open up a National Network for travel by larger trucks", 49 Fed. Reg. at 23310

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[5]FHWA's final rule is now codified at 23 C.F.R. §§ 658.1-658-21.

and "the STAA mandates that the full Interstate Systems be available for the operation of commercial vehicles of the dimensions authorized." Ibid, at 23304 (emphasis added).

Although the Court of Appeals concluded that it was not bound by this interpretation of FHWA because the issue before the Court was "a matter of pure statutory construction", Pet. App. 13, nevertheless, given FHWA's interpretation and the Court of Appeals adoption of that interpretation, respondents are hard-pressed to understand what further guidance is needed. Moreover, respondents submit that the Court of Appeals erred in not giving deference to FHWA's interpretation. In Chevron U.S.A. v. National Resources Defense Council, No. 82-1005, filed June 25, 1984, this Court

noted that a distinction exists between (1) an agency interpretation which construes a statute in a manner in conflict with clear Congressional intent and (2) an agency interpretation of a statute which is silent or ambiguous as to important details of enforcement. Although respondents believe that the STAA is rather clear in its application to only the Designated Network, assuming arguendo that the statute is ambiguous, so long as "the agency's answer is based on a permissible construction of the statute", courts will give that construction deference. Ibid., Slip Op. at 4-5.[6] A review of the rationale of

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[6]Even the District Court, which ruled against respondents on both issues, conceded that it was "difficult to fully determine the underlying policy implications of the STAA" and the STAA's legislative history provided "little guidance". Pet. App. 31-32.

the Court of Appeals confirms that FHWA's interpretation not only was permissible, it was correct.[7]

2. Second, although petitioners suggest that confusion exists regarding the type of equipment which carriers should purchase, the only parties apparently confused are the

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[7]Although petitioners argue that FHWA's interpretation does not comport with the language of the STAA (petition at 11), subsequent events indicate otherwise. As noted earlier, five and one-half months subsequent to FHWA's publication of its interpretation in the Federal Register, Congress enacted the Tandem Truck Safety Act of 1984, and in doing so, amended Sections 411 and 412 of the STAA in such a manner as to

(Footnote continued on next page)

carrier petitioners, National Freight, Inc. and Dart Transit Co. The other petitioners are manufacturers.

Footnote continued

actually provide for the elimination of certain interstate roads from the designated Network. Furthermore, as Senate Report No. 98-505 illustrates, Congress was fully aware of FHWA's involvement in the 1982 legislation, and was fully aware of FHWA's responses to that legislation. See Senate Report No. 505, 98th Cong. 2d Sess., reprinted in 1984 U.S. Code Cong. & Ad. News 4769, 4772-4776; see also H.Rep. No. 926, 98th Cong. 2d Sess. (submitted August 1, 1984). A copy of excerpts from the Senate Report appears in the Addendum at pp. 1-6. Thus, not only do the congressional reports and the 1984 legislation confirm that Congress's concern was limited to the operation of large combination vehicles on the Designated Network, it further confirms that Congress, with full knowledge of FHWA's involvement and responses to the 1982 legislation, chose not to amend or modify Section 411 to read as petitioners would like it to read. When Congress re-enacts provisions of law with presumed knowledge of administrative interpretations thereof, Congress is treated as having adopted those interpretations, and courts are bound thereby. See United States v. Sheffield Board of Commissioners, 435 U.S. 110, 134 (1977). Pet. App. 37-38.

Again, the gravamen of petitioners' concern is allegedly the state's inability "to get clear guidance on the application of the STAA's [no overall length] clause". Petition at 10. This statement is simply untrue. As noted above, FHWA has issued clear, unequivocal guidance on the question and Congress has not disturbed this guidance. What is true is that petitioners are simply unhappy with the guidance which has been forthcoming, first from FHWA, then from the Third Circuit Court of Appeals, and finally from the Tandem Truck Safety Act of 1984. This is not a case in which a court has issued a decision in conflict with an administrative agency's interpretation. Admittedly, a stronger argument can be made that this

Court should grant review to resolve an inconsistency between an agency's and court's interpretation. See, e.g., Federal Open Market Comm., etc. v, Merrill, 443 U.S. 340 (1979). No such inconsistency exists in this case.

3. Finally, petitioners argue that this Court should review the case to determine congressional policy. However, it is difficult to understand why this Court's determination is necessary when, as noted, the administrative agency, the Third Circuit and Pennsylvania have each independently addressed that issue and reached the same result. It is also difficult to understand why petitioners' case presents an issue of sufficient national importance to merit this Court's review. However, even assuming arguendo that petitioners

have otherwise stated an issue of sufficient national importance, an analysis of the STAA confirms that the Court of Appeals was correct in its holding.

Without expressly stating it, petitioners are asking this Court to hold that, in enacting the STAA, Congress intended to prohibit states from imposing any overall length limitations on any public roadway. Clearly, this was not the intent of Congress, and the Court of Appeals properly so noted: "it is difficult to believe that Congress desired to preempt state vehicle length laws as to every street, road, and alleyway in a state, thus potentially subjecting narrow streets in densely populated areas and narrow country roads

to tractor trailers seventy (70) feet or more in length." Pet. App. 17.[8]

One of the main purposes of the STAA was the enhancement of interstate commerce, see H.Rep. No. 555, 97th Cong. 2d Sess. 23, reprinted in 1982, U.S.

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[8]In oral argument before the Court of Appeals, counsel for petitioners admitted that a tractor "can run up to as much as twenty feet." Thus, if petitioners' interpretation were accepted, the STAA would prohibit states from regulating the operation of seventy-three (73) foot semi-trailer combinations (53 feet plus 20 feet) regardless of the type of road. Not only is this position wanting for logic, it becomes further illogical in view of this Court's prior conclusion that 55 foot semi-trailer combinations are susceptible "to dangerous off-tracking". See Kassell v. Consolidated Freightways Corp., 450 U.S. 662, 672 (1980). Thus, it would be patently illogical to conclude that Congress intended to preempt the states by authorizing the use of 73 foot semis on all public roads.

Code Cong. & Ad. News 3629, 3661, and this purpose was clearly and logically accomplished by permitting the operation of 48 foot semi-trailers and 28 foot twin-trailers on any segment of the national Designated Network without regard to overall length.[9] In addition, the STAA requires that no state shall

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[9]Indeed, when the STAA was amended in 1984 by the Tandem Truck Safety Act, the Senate Report from the Committee on Commerce, Science and Transportation reiterated: "the Surface Transportation Assistance Act of 1982 (STAA) established uniform truck length requirements for trucks traveling on the national system of interstate and defense highways and certain segments of the federal aid primary system highways, as designated by the Secretary of Transportation... Section 411 of the STAA sets minimum nationwide truck length limits of 48 feet for the semitrailer unit of a truck-tractor-semi-trailer combination and 28 feet for the trailer or semi-trailer operating in a truck

Footnote continued on next page

deny these vehicles access from the Designated Network to facilities for food, fuel, repair, rest and terminals. 49 U.S.C. § 2312. Under the Court of Appeal's decision, petitioners are not precluded from using their 53 foot

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Footnote continued

tractor-semi-trailer-trailer combination. These limits...apply to vehicles operating on the national system of interstate and defense highways and qualifying federal aid primary system highways designated by the Secretary of Transportation...The STAA mandates that tandem trailer trucks and the other longer, wider trucks authorized under that act be permitted on all interstate highways." 1984, U.S. Code Cong. & Ad. News at 4769, 4770, 4771 (emphasis added).

Clearly the STAA of 1982, as amended by the Tandem Truck Safety Act of 1984, did not (and does not) preclude states from regulating overall length limits on roads which are not part of the Designated Network.

trailers in Pennsylvania. They are not precluded from using these trailers in combination with a tractor of unlimited length on the Designated Network.[10] These trailers can travel from the Designated Network to terminals, including those which are not their own, again without regard to overall length.[11] Finally, petitioners may operate their 53 foot trailers on any Pennsylvania road for local delivery and pick-up so long as they stay within Pennsylvania's 60 foot overall length limitation.

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[10]As noted earlier, this is the issue which Pennsylvania chose not to appeal to this Court.

[11]Under Pennsylvania law, a terminal is defined as "a facility, to or from which a combination is actually

(Footnote continue on next page)

Thus, Pennsylvania's requirement that petitioners accomplish their local deliveries with combination vehicles which do not exceed 60 feet in length is no more of a burden than that which the STAA has placed upon twin-trailer carriers, who, upon arrival at a terminal, are required to "break" their combination for local delivery. In fact, the burden to petitioners may be less. See

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Footnote continued

en route for loading, unloading, breaking down or storing, which has adequate off-highway parking, maneuvering and vehicle storage area to which vehicles can obtain access and egress without backing from or onto a highway, street or public alley." 75 Pa. Cons. Stat. Ann. § 102 (Purdons 1983). And, it should be noted that petitioner National Freight, Inc., does have four terminal facilities in Pennsylvania whereby it could drop its 53 foot containers and then accomplish local delivery by either "breaking" the loaded trailer or connecting it to a shorter tractor. Pet. App. 37.

Section 2312(b).[12]

Contrary to petitioners' assertion, the decision of the Court of Appeals does not violate any safety consideration which Congress had in mind. Petitioners' sole basis for its interpretation of the STAA is a single sentence in Section 411 which prohibits the states from imposing overall length limitations, petition at 2. As the

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[12]Although petitioners speak of the economic burden allegedly imposed on them by reason of Pennsylvania laws, petition at 9 n.8, the question before this Court does not involve the commerce clause and that clause's balancing test. Rather, Congress having affirmatively addressed the question of vehicle length, the sole question before this Court is whether Pennsylvania's law conflicts with federal law and thus violates the Supremacy Clause. See Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 154-55 (1982).

Court of Appeals logically concluded, however, this prohibition was obviously limited to operations on the Designated Network, and Congress did not intend to "completely deprive the states of the power to regulate vehicle lengths, even as to roads off the National Network". Pet. App. 17.

Nor does the decision of the Court of Appeals force petitioners to operate short tractors everywhere (see petition at 9). If petitioners are going to use short tractors everywhere, it is because of two factors: first, their desire to make as much profit as possible by squeezing the length of their cabs and extending the length of their trailers in the first place, and second, their refusal to operate their local delivery business as they apparently did with success for years prior

to the STAA; i.e., within a 60 foot overall length limit.[13]

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[13]Petitioners make much of the fact that the STAA was intended to eliminate state cab length restrictions for combination vehicles regardless of the road upon which they are operating (petition at 7). However, the inconsistency of petitioners' argument is apparent from the very language of the STAA. Indeed, the STAA only prohibits the states from regulating cab length when the combination is operated on the Designated Network. See Section 411(b). Thus, Pennsylvania could pass a law tomorrow which limits a cab's length to seven (7) feet when operating off of the Designated Network without violating the STAA. Clearly, to the extent Congress was concerned with cab length, that concern related to long-haul, over-the-road travel, and not short, local delivery service. Proof of this appears in the title to Section 411 - "Length Limitations on Federally Assisted Highways".

CONCLUSION

For the foregoing reasons, the writ should not be granted.

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A D D E N D U M

EXCERPTS FROM SENATE REPORT NO. 98-505

DATED JUNE 6, 1984, ON THE TANDEM TRUCK SAFETY ACT OF 1984 FROM THE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION (TO ACCOMPANY S. 2829)

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2217) entitled the "Tandem Truck Safety Act of 1984", having considered the same, reports favorably thereof with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill do pass.

PURPOSE OF THE BILL

The Surface Transportation Assistance Act of 1982 (STAA) established uniform truck length requirements for trucks travelling on the National System of Interstate and Defense Highways and certain segments of the Federal-aid Primary System highways, as designated by the Secretary of Transportation. A comparable nationwide width standard of 102 inches was established as part of the fiscal year 1983 Department of Transportation (DOT) appropriations act (Public Law 97-369) and was amended early in 1983 (Public Law 98-17) to make the effective dates of the length and width provisions coincide on April 6, 1983.

Trucking companies point to important productivity gains which will result from the new uniform limits, once in

place nationwide. Many also believe that safety is enhanced due to the need for fewer trucks on the road, given the increased cargo capacity of the larger trucks, and the improved maneuverability of tandem trucks compared to single trailers.

Officials in some urban areas, however, are concerned that the longer trucks, tandem units, and the 102-inch wide trucks may constitute a safety hazard on older urban Interstate highways which do not meet current construction specifications. These highways, therefore, are considered by these officials to be unable to accommodate the larger trucks.

This legislation amends the STAA to ensure establishment of a nationwide route system for the larger trucks which can safely accommodate these vehicles.

BACKGROUND AND NEEDS

SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982

Section 411 of the STAA sets minimum nationwide truck length limits of 48 feet for the semitrailer unit of a truck tractor-semi-trailer combination and 28 feet for the trailer or semitrailer operating in a truck tractor-semi-trailer-trailer combination. These limits, which are exclusive of safety and energy conservation devices, apply to vehicles operating on the National System of Interstate and Defense Highways and qualifying Federal-aid Primary System highways designated by the Secretary of Transportation. The STAA precludes States from prohibiting the operation of "double" (i.e., a truck trailer and two trailing units) on any segment of highway which the Secretary has designated for their use.

Section 411 required the Secretary to make an initial determination of highways to be designated for the use of the longer trucks and doubles by April 6, 1983, and a final designation by October 6, 1983. In addition to opening all Interstate highways to the larger trucks, this section required the Secretary to designate as qualifying Federal-aid Primary System highways those such highways that are capable of safely accommodating the longer trucks and doubles.

* * * *

Interstate system characteristics

The STAA mandates that tandem trailer trucks and the other longer, wider trucks authorized under that act be permitted on all interstate highways. Some State officials, however, are concerned that some segments of interstate highways cannot safely accommodate these larger motor vehicles. Certain routes which are part of the interstate system were not built according to currently accepted interstate standards; under current federal law, a State may designate certain roads as interstate routes although the roads were not built with interstate funds.

* * * *

Reasonable access

The STAA requires that States not deny reasonable access between the national highway network and terminals, facilities for food, fuel, repairs, and rest, and points of loading and unloading for household goods carriers. The Secretary has allowed the State to establish individual provisions for access to the national network, rather than establish a Federal definition of reasonable access. Trucking industry representatives testified before the Surface Transportation Subcommittee that this nonuniformity of access has become a considerable burden for trucking companies. As of September 1983, 18 States

allow unlimited access, some permit very little deviation from the national network, and 13 States have no policy at all.

An additional concern is that the STAA is unclear as to whether trucking companies may use single 28-foot by 102-inch trailers in local pickup and delivery service. Trucking companies attempt where possible to use the same equipment for local service and over-the-road operations in order to avoid rehandling of freight at carrier's terminal facilities. For example, Roadway Express testified that it currently uses standard 45-foot by 96-inch semitrailers for roughly 75 percent of its local pickup and delivery operations. Roadway, as well as other motor carriers, wants to take advantage of the STAA provisions allowing nationwide use of the longer, wider trucks and tandem trailer units on designated routes. With the introduction of tandem trailer units into its fleet, Roadway therefore envisions using the single 28-foot trailer as a local pickup and delivery vehicle, replacing the 45-foot trailer for this purpose. The trucking industry maintains that both safety and productivity will be enhanced if the 28-foot by 102-inch single trailers are authorized for use in local pickup and delivery operations, through clarification of the STAA provisions.

DOT route designations

On February 3, 1983, DOT's Federal Highway Administration (FHWA) published a Notice of Policy Statement regarding the nationwide truck size and weight standards. FHWA defined "qualifying" highways, for use by both longer and wider trucks, as:

-the interstate system;

-those sections of the Federal-aid primary system which are divided highways with four or more lanes and full control of access--except where the State can justify that such use is not in the public interest (e.g., parkways or other routes where truck traffic is currently prohibited); and

-other Federal-aid primary system highways designated by a State that comply with safety and operational requirements, such as traffic lanes designated to be at least 12 feet wide.

DOT noted in this policy statement that the intent of this legislation was to "provide for the needs of interstate commerce by granting appropriate access to highways built with Federal-aid financial assistance without compromising the safety of the traveling public and the structural integrity of the highway system." (Federal Register, February 3, 1983, p. 5211). In adopting this policy, FHWA said it "has attempted to interpret the intent of the Congress to accommodate the needs of the Nation for a safe, efficient, and economical highway transportation system." (Federal Register, February 3, 1983, p. 5212).

* * * *

SUBCHAPTER II - LENGTH AND WIDTH LIMITATIONS § 2311. Length limitations on federally assisted highways

(a) Prohibition against certain limitations on semitrailers and trailers

Except as provided in subsection (i) of this section, no State shall establish, maintain, or enforce any regulation of commerce which imposes a vehicle length limitation of less than forty-eight feet on the length of the semitrailer unit operating in a truck tractor-semitrailer combination, and of less than twenty-eight feet on the length of any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination, on any segment of the National System of Interstate and Defense Highway (other than a segment exempted under subsection (i) of this section) and those classes of qualifying Federal-aid Primary System highways as designated by the Secretary of Transportation (hereinafter in this part referred to as the "Secretary"), pursuant to subsection (e) of this section.

(b) Nonapplicability of limitations to truck tractors; prohibition against overall length limitations on truck-tractor semitrailer or truck-tractor semitrailers, trailer combinations; prohibition against regulation of commerce prohibiting use of certain trailers and semitrailers.

Length limitations established, maintained, or enforced by the States under subsection (a) of this section shall apply solely to the semitrailer or trailer or trailers and not to a truck tractor. No State shall establish, maintain, or enforce any regulation of commerce which imposes an overall length limitation on commercial motor vehicles operating in truck-tractor semitrailer or truck tractor semitrailer, trailer combinations. No State shall establish, maintain, or enforce any regulation of commerce which has the effect of prohibiting the use of trailers or semitrailers of such dimensions as those that were in actual and lawful use in such State on December 1, 1982. No State shall establish, maintain, or enforce any regulation of commerce which has the effect of prohibiting the use of existing trailers or semitrailers, of up to twenty-eight and one-half feet in length, in a truck tractor-semitrailer-trailer combination if those trailers or semitrailers were actually and lawfully operating on December 1, 1982, within a sixty-five-foot overall length limit in any State.

(c) Prohibition by State of combination of truck tractor and two trailing units forbidden.

No State shall prohibit commercial motor vehicle combinations consisting of a truck tractor and two trailing units on any segment of the National System of Interstate and Defense Highways (other than a segment exempted under subsection

(i) of this section), and those classes of qualifying Federal-aid Primary System highways as designated by the Secretary pursuant to subsection (e) of this section.

(d) Establishment of rules and making of determinations by Secretary

The Secretary is authorized to establish rules to implement the provisions of this section, and to make such determinations as are necessary to accommodate specialized equipment (including, but not limited to, automobile transporters) subject to subsections (a) and (b) of this section.

(e) Designation of qualifying Federal-aid Primary System highways; time; enactment of final rules

(1) The Secretary shall designate as qualifying Federal-aid Primary System highways subject to the provisions of subsections (a) and (c) of this section those Primary System highways that are capable of safely accomodating the vehicle lengths set forth therein.

(2) The Secretary shall make an initial determination of which classes of highways shall be designated pursuant to paragraph (1) within 90 days of January 6, 1983.

(3) The Secretary shall enact final rules pursuant to paragraph (1) no later

than two hundred and seventy days from January 6 1983, and may revise such rules from time to time thereafter.

(f) Truck tractor defined

For the purposes of this section, "truck tractor" shall be defined as the noncargo carrying power unit that operates in combination with a semitrailer or trailer, except that a truck tractor and semitrailer engaged in the transportation of automobiles may transport motor vehicles on part of the power unit.

(g) Effective date

The provisions of this section shall take effect ninety days after January 6, 1983.

(h) Exclusion of safety and energy conservation devices

The length limitations described in this section shall be exclusive of safety and energy conservation devices, such as rear view mirrors, turn signal lamps, marker lamps, steps and handholds for entry and egress, flexible fender extensions, mud-flaps and splash and spray suppressant devices, load-induced tire bulge, refrigeration units or air compressors and other devices, which the Secretary may interpret as necessary for safe and efficient operation of commercial motor vehicles, except that no device excluded under this subsection from the limitations of this section shall have by its design or use the capability to carry cargo.

(i) Exemption from length requirements

(1) If the Governor of a State, after making the consultations specified in paragraph (2) of this subsection, determines that any specific segment of the National System of Interstate and Defense Highways is not capable of safely accommodating motor vehicles having the lengths set forth in subsection (a) of this section or motor vehicle combinations described in subsection (c) of this section, the Governor may notify the Secretary of such determination and request that the Secretary exempt such segment from one or both of such subsections.

(2) Before making such notification, the Governor shall consult with units of local government within the State in which the specific segment of such System is located, as well as the Governor of any State adjacent to that State that might be directly affected by such exemption. As part of such consultations, consideration shall be given to any potential alternative route that--

(A) can safely accommodate motor vehicles having the lengths set forth in subsection (a) of this section or motor vehicle combinations described in subsection (c) of this section; and

(B) serves the area in which such segment is located.

(3) The Governor shall transmit with such notification specific evidence of safety problems that supports such determination and the results of consultation regarding any alternative route under paragraph (2) of this subsection.

(4)(A) If the Secretary determines, upon request by a Governor under paragraph (1) of this subsection or on the Secretary's own initiative, that any segment of the National System of Interstate and Defense Highways is not capable of safely accommodating motor vehicles having the lengths set forth in subsection (a) of this section or motor vehicle combinations described in subsection (c) of this section, the Secretary shall exempt such segment from one or both of such subsections. Before making such determination, the Secretary shall consider any possible alternative route that serves the area in which such segment is located.

(B) The Secretary shall make such determination within a period of 120 days after the date of receipt of notification from a Governor under paragraph (1) of this subsection or the date on which the Secretary initiates action under this paragraph, as the case may be, with respect to such segment. If the Secretary determines that such determination will not be made within such time period, the Secretary shall immediately notify the Congress and shall furnish the reasons for the delay, information regarding the resources assigned, and the projected completion date, for any such determination.

(C) The Secretary shall make such determination only after affording interested parties notice and the opportunity for comment. Any exemption granted by the Secretary under this paragraph before the date on which final rules are issued under subsection (a) of this section shall be included as part of such final rules. Any such exemption granted on or after such date shall be published as a revision of such rules.

§ 2312. Access to the Interstate System

(a) No State may enact or enforce any law denying reasonable access to commercial motor vehicles subject to this chapter between (1) the Interstate and Defense Highway System (other than any segment thereof which is exempted under section 2311(i) or 2316(e) of this title) and any other qualifying Federal-aid Primary System highways, as designated by the Secretary and (2) terminals, facilities for food, fuel, repairs, and rest, and points of loading and unloading for household goods carriers and for any truck tractor-semitrailer combination in which the semitrailer has a length not to exceed 28 1/2 feet and which generally operates as part of a vehicle combination described in section 2311(c) of this title.

(b) Nothing in this section shall be construed as preventing any State or local government from imposing any reasonable restriction, based on safety considerations, on any truck tractor-semitrailer combination in which

the semitrailer has a length not to exceed 28 1/2 feet and which generally operates as part of a vehicle combination described in section 2311(c) of this title.

PENNSYLVANIA VEHICLE CODE

Sections 102, 4904(e), 4908, 4921(a), 4923(a), Title 49, Pa.Cons.Stat.Ann.

§ 102. Definitions.

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

"Terminal." A facility, to or from which a combination is actually en route for loading, unloading, breaking down or storing, which has adequate off-highway parking, maneuvering and vehicle storage area to which vehicles can obtain access and egress without backing from or onto a highway, street or public alley.

§ 4904. Limits on number of towed vehicles.

* * *

(e) Two-trailer combinations on interstate and designated primary highways.--Combinations consisting of a truck tractor and two trailers may only be driven as described in section 4908 (relating to operation of certain combinations on interstate and certain primary highways).

§ 4908. Operation of certain combinations on interstate and certain primary highways.

(a) General rule.--Combinations authorized by section 4904(e) (relating to limits on number of towed vehicles) to have two trailers, or by section 4923(b)(6) (relating to length of vehicles) to exceed the length limitations for combinations, may be driven only on the types of highways and under the limitations set forth below:

(1) On a designated network consisting of all interstate highways and portions of Federal aid primary highways having at least a 48-foot-wide roadway or two 24-foot-wide roadways and designated by the department as capable of safely accomodating such vehicles.

(2) Between the designated network and either of the following:

(i) A terminal or a facility for food, fuel, repair or rest having an entrance within two-tenths of a mile of the nearest ramp or intersection, but only on highways having

lanes at least 12 feet wide and only if the facility meets the criteria for off-street parking, maneuvering and vehicle storage area for terminals.

(ii) A terminal which can safety and reasonably be accessed using highways approved under subsection (d).

(b) Household goods carriers.--In addition to the operations authorized in subsection (a), a household goods carrier, consisting of a truck tractor and either of the following:

(1) A single trailer, which exceeds the maximum length for combinations established in section 4923(a), may be driven between the designated network and a point of loading or unloading which can safely and reasonably be accessed.

(2) Two trailers may be driven between the designated network and a point of loading or unloading which can safely and reasonably be accessed using highways approved under subsection (d) for the particular movement.

(c) Nearby terminals and facilities. --Where one or more terminals or facilities for food, fuel, repair or rest along a highway having lanes at least 12 feet wide are in close proximity to a terminal or facility which is within two-tenths of a mile of the designated network, all of such terminals and facilities shall be deemed to be within two-tenths of a mile of the designated network.

(d) Route approval.--Approval of a route under subsection (a)(2)(ii) or (b)(2) shall be obtained from the:

(1) City in the case of any highway in a city.

(2) Department in the case of a State highway not in a city, except that the department will, upon request, delegate authority to approve routes under this subsection to a municipality which has been delegated authority to issue permits in accordance with section 420 of the act of June 1, 1945 (P.L. 1242, No. 428), known as the State Highway Law.

(3) Municipality in the case of a local highway not in a city.

(e) Notice.--

(1) The department shall publish the designated network established in subsection (a)(1) in the Pennsylvania Bulletin as a notice under 45 Pa.C.S. § 725(a)(3) (relating to additional contents of Pennsylvania Bulletin) and will also forward the designated network to trucking companies and associations and other interested parties, upon request.

(2) Approval of a route under subsection (a)(2)(ii) shall be effective upon notice by the approving authority to the person who requested it. Notice of the approval shall also be given to State and affected local police and shall be published in the Pennsylvania Bulletin within ten days as a notice under 45 Pa.C.S. § 725(a)(3).

(3) Approval of a route under subsection (b)(2) shall be effective upon notice by the approving authority to the person who requested it. Notice of the approval shall also be given to State and affected local police and shall be published in the Pennsylvania Bulletin within ten days.

(f) Revocation of route approval.--The authority which approved a route under subsection (a)(2)(ii) may revoke the route approval if it determines that the route or some portion of it cannot safely and reasonably accommodate combinations authorized to exceed length or number of trailer limitations. Notice of the revocation shall be published in the Pennsylvania Bulletin as a notice under 45 Pa.C.S. § 725(a)(3) and shall be effective 15 days after such publication, except that the posting authority may effect an earlier revocation by posting signs to indicate the revocation. Written notice of the revocation shall also be given to the person who requested the route approval and to State and affected local police.

§ 4921. Width of vehicles.

(a) General rule.--The total outside with of a vehicle, including any load, shall not exceed eight feet except as otherwise provided in this section. While operating as provided in section 4908 (relating to operation of certain combinations on interstate and certain

primary highways), the total width of a vehicle shall not exceed eight and one-half feet, except as otherwise provided in this section.

§ 4923. Length of vehicles.

(a) General rule.--Except as provided in subsection (b) no motor vehicle, including any load and bumpers, shall exceed an overall length of 40 feet, and no combination, including any load and bumpers, shall exceed an overall length of 60 feet.

(b) Exceptions.--The limitations of (a) do not apply to the following:

* * *

(6) Any combination consisting of a truck tractor and one or two trailers, when driven as described in section 4908 (relating to operation of certain combinations on interstate and certain primary highways), provided that, except when being operated as a part of a combination of a tractor and single trailer not exceeding an overall length of 60 feet, the length of a single trailer shall not exceed 48 feet and the length of each double trailer shall not exceed 28 feet.